TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]160

PACIFIC MAIL STEAMSHIP COMPANY, PETITIONER,

vs.

J. LUCAS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 25, 1920.

CERTIORARI AND RETURN FILED JANUARY 6, 1921.

(27,952)

(27,952)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 595.

PACIFIC MAIL STEAMSHIP COMPANY, PETITIONER,

vs.

J. LUCAS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 19, 1921.

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1 In the Southern Division of the United States District Court for the Northern District of California.

Clerk's Office.

No. 16,600.

J. Lucas, Libelant,

vs.

Pacific Mail Steamship Company, Libelee.

Præcipe (for Apostles on Appeal).

To the Clerk of said Court:

Sir: Please issue apostles on appeal, as required by Rule 4, Rules in Admiralty, Circuit Court of Appeals, containing the following:

1. Libel.
2. Answer to libel.
3. Libelant's answers to interrogatories of libelee.
4. Depositions of libelee's witnesses.
5. Deposition of libelant and exhibits thereto.
6. Evidence and proofs in cause.
7. Opinion of Judge Dooling.
8. Final decree.
9. Notice of appeal.
10. Assignments of error.

CHAS. J. HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Appellant.

[Endorsed:] Filed Nov. 3, 1919. W. B. Maling, Clerk, by C. M. Taylor, Deputy Clerk.

2 *Statement of Clerk U. S. District Court.*

Title of Cause.

No. 16,600.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Libelee.

Parties.

Libelant: J. Lucas.
Libelee: Pacific Mail Steamship Company, a Corporation.

Proctors.

For Libelant and Appellee: Albert Michelson, Esq., Merchants Exchange Bldg., San Francisco, Calif. (F. R. Wall, Esq. (deceased), was the original proctor.)
For Libelee and Appellant: Chas. J. Heggerty, Knight & Heggerty, San Francisco, California.

Proceedings.

1919.

May 23. Filed libel for wages, maintenance, and medical treatment, in the sum of $219.00.
June 2. Filed exceptions to libel.
June 28. This cause came on this day for hearing on the exceptions to the libel, before the Honorable, Wm.
3 W. Morrow, Judge of the U. S. Circuit Court of Appeals, sitting in this court. On motion of proctor for libelant, the Court ordered that the exceptions be overruled.
July 3. Filed answer and interrogatories of respondent propounded to libelant.
8. Filed answers of libelant to interrogatories propounded to him by libelee.
September 13. This cause came on this day for hearing on the issues, before the Honorable Maurice T. Dooling, District Judge. After hearing, the cause was argued and order submitted.
29. Filed deposition of libelant, J. Lucas.
29. Filed depositions of Fred M. Kramer, Robert R. Drummond, George W. Yardley and A. W. Rickey, taken on behalf of the libelee.
October 1. Filed opinion and order for entry of a decree as prayed for in the libel, and sustaining objection to Exhibit 4.
6. Filed final decree.
31. Filed notice of appeal.

October 31. Filed assignment of errors.
31. Filed bond for costs ($250.00) and supersedeas bond
($500.00) with National Surety Company as surety.
November 3. Filed praecipe for apostles on appeal.
December 11. Filed one volume of testimony, taken in open court.

In the United States District Court in and for the Southern Division of the Northern District of California, First Division.

(In Admiralty.)

No. (16,600).

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Libelee.

Libel for Wages and Maintenance $219.00.

To the Honorable Judges of the United States District Court in and for the Southern Division of the Northern District of California, First Division, in Admiralty:

The libel of J. Lucas, late a seaman on board of the American steamship "Venezuela," against the Pacific Mail Steamship Co., a corporation, the owner and operator of said steamship, in a cause of libel for wages and maintenance, civil and maritime, alleges as follows:

1. That as libelant is informed and believes and therefore alleges the truth to be, at all of the times hereinafter mentioned, the libelee, Pacific Mail Steamship Co., was, ever since has been, and still is, a corporation, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at San Francisco in said state; that at all of said times, said corporation, owned and operated that certain steamship known as and called the "Venezuela," which said steamship was, at all of said times and still is, a vessel of the United States Mercantile Marine.

2. That on the 18th day of February, 1919, at San Francisco, California, the libelant herein, J. Lucas, was hired by said libelee to serve as a water-tender for wages at the rate of $75 a month on said steamship on a voyage from said San Francisco to points in the Orient and return to said San Francisco as a port of final discharge; that for the due performance of said contract of hiring said libelant signed shipping articles which he asks may be produced to this Court for greater certainty in the premises; that said libelant went on board and into the service of said libelee as said water-tender on said vessel on said 18th day of February and thereafter said vessel sailed on said voyage with said libelant so serving on board of her, and that while

in the prosecution of said voyage with said libelant serving on board of her as such water-tender, said libelant fell sick and was sent
6 to a hospital on shore at Honolulu, in the Territory of Hawaii, and said vessel continued on said voyage without said libelant on board of her, said libelant having been left on shore at said hospital because of his said sickness; that said vessel arrived at said San Francisco on the 25th day of April, 1919, and completed said voyage; that while said libelant was at said Honolulu and for a period of eleven days, he was compelled to and did pay for his subsistence, the sum of $44.00, and, further, said libelant during said time was compelled to and did pay for medical attendance the further sum of $25.00; that libelant was sent to said hospital in Honolulu upon the 25th day of February, 1919, and was paid his wages up to said date; that because of the premises there is due, owing and unpaid to said libelant, over and above all just dues and offsets, wages from said 25th day of February to said 25th day of April, amounting to the sum of $150 and for subsistence at Honolulu for eleven days, the further sum of $44.00 and for medical attendance at Honolulu the further sum of $25.00, or a total sum of $219.00, no part of which has been paid, although demand for the payment of the same has been made upon said libelee; that libelant asks this Court to award to him said sum of $219.00.

3. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that a citation may issue out of this Honorable Court in accordance with the practice in admiralty, citing said libelee to appear and answer, under oath, all and singular,
7 the matters aforesaid, and that this Court would be pleased to decree the payment to said libelant by said libelee, the sums asked for in said libel; and that said libelant may have such other and further relief as he may be entitled to receive in the premises and as the Court may be competent to give.

F. R. WALL,
Proctor for Libelant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss.

J. Lucas, being first sworn deposes and says: That he is the person named as libelant in the above and foregoing libel; that he has read said libel and knows the contents thereof, and that the same is true of his own knowledge.

J. LUCAS.

Subscribed and sworn to before me this 23d day of May, 1919.

[SEAL.] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California.

Received a copy of the within libel for wages, etc., this 23d day of May 1919.

KNIGHT & HEGGERTY,
Proctors for Libelee.

It is agreed that libelee may have ten (10) days from the 23d day of May, 1919, to plead to or move against the within libel.

F. R. WALL,
Proctor for Libelant.

[Endorsed:] Filed May 23, 1919. W. B. Maling, Clerk, by C. W. Calbreath Deputy Clerk.

8 In the United States District Court in and for the Southern Division of the Northern District of California.

No. 16,600—In Admiralty.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP CO., a Corporation, Libelee.

Answer.

The answer of Pacific Mail Steamship Company, libelee, to the libel of libelant, denies, alleges and states as follows:

1 For answer to Article "2" of said libel, libelee denies upon its information and belief that libelant fell sick while on said voyage and in the service of said "Venezuela" and was sent to a hospital on shore at Honolulu; but avers, upon its information and belief, that while said vessel was performing her said voyage outbound from the port of San Francisco, and was on the high seas, on the 19th day of February, 1919, fire drill on the "Venezuela" was ordered, in which it was the duty of libelant to take part, and that libelant during said fire drill and while the life-boat was being swung out, disobeyed the orders of and was insolent to the Third Officer of said vessel in charge of said life-boat during said fire drill, and that said libelant was thereupon therefor duly and legally logged and legal entry duly made thereof and certified as required by law in

9 the log-book of said vessel, and said libelant was then and there and thereby fined two days' pay therefor, but said pay has never been at any time deducted from any wages earned by or payable to libelant; that thereafter and before said vessel reached Honolulu, libelant, as libelee is informed and believes and so avers, pretended to become and that he was ill, and when said vessel reached Honolulu, said libelant still pretended to be ill and insisted that he be discharged from said Shipping Articles and be paid his wages in full and be given a permit to go for treatment to the Marine Hospital at Honolulu, he then pretending that he was not be-

ing properly treated and prescribed for by the ship's doctor, there being carried on said vessel as the ship's doctor and a member of the crew thereof, a physician and medical practitioner, who then was and for a long time prior thereto had been, a competent, qualified, licensed and practicing physician and surgeon, competent and qualified in all respects to properly prescribe for and treat libelant as a physician and surgeon for his said pretended illness and also for any real or actual illness of libelant while on board said vessel and during her said voyage, and said vessel was competently and fully equipped and supplied with medicines and facilties and with hospital ward to properly, competently and successfully treat, care for and cure said libelant on said vessel, and that there was no reason or necessity for said libelant to be put ashore to be treated for any illness or pretended illness of the libelant; but that libelant
10 refused to remain upon said vessel during or to continue on said voyage or to remain on board said vessel for or to be so treated and cared for during said voyage for any actual or for his pretended illness, and he insisted and demanded that he be discharged and paid his wages in full at Honolulu; that thereupon said libelant was, at Honolulu, on February 25, 1919, discharged and paid off said articles and paid his wages in full before the United States Shipping Commissioner at Honolulu, and that said Shipping Commissioner then and there entered in writing upon said articles and signed and certified thereon, and also in writing signed and certified that said libelant was on said day discharged at Honolulu and paid the sum of $24.50 in settlement of his wages.

Libelee avers upon information and belief that said libelant was not ill or sick and did not fall sick upon said voyage and was not sent to said hospital by libelee, but that he pretended to be ill and feigned illness wilfully and intentionally in order to secure his discharge at Honolulu from said voyage and articles and to be there paid his full wages and that he could wait and remain idle at Honolulu, and not render any further service for or to libelee until the voyage of said "Venezuela" should be ended and then make claim and bring this libel against libelee, and that he did not and was not permitted by the physician in charge of said Marine Hospital to remain in but was discharged from said Marine Hospital because he was not ill or sick within about a day or two days later; avers that libelee has no information or knowledge sufficient to
11 answer the allegations of said Article "2," that libelant paid $44 for his subsistence in Honolulu or $25 for medical attention there, and calls for proof of said allegations; denies that libelant was sent to said hospital by libelee on February 25, 1919, or at all; denies, that because of the premises in said libel stated or otherwise or at all there is due or owing or unpaid or ever became or was due or owing or unpaid to libelant any wages from February 25, 1919, to April 25, 1919, in the sum or amount of $150 or any other sum or wages at all, or for subsistence at Honolulu or at all the sum of $25, or any other sum or a total of $219; but alleges that said libelant, at his own request and demand and against the wish and without the consent of libelee, said libelant left said vessel at Hono-

lulu, refused to remain and perform his duty upon said vessel and under his articles of agreement and hiring, and was paid off his wages in full and discharged before and by the United States Shipping Commissioner at Honolulu; and that said libelant never thereafter reported for service to libelee or offered to perform service as such seaman for libelee or notified libelee whether he was ill or had recovered from either any actual or pretended illness.

2. For answer to Article 3 of said libel, the libelee denies that all or singular the premises in said libel stated are true.

3. For a separate and additional and alternative defense to said libel in whole or in part thereof, as from the facts it shall be proved and appear to the Court libelee avers that said libelant was, at all times on and from said 25th day of February, 1919, physically able and competent to perform the service of a seaman, and could have obtained employment and compensation as such equal to that agreed in his shipment with libelee, upon vessels entering and sailing from said port of Honolulu upon voyages the same or similar to that upon which he shipped with libelee on said "Venezuela," but that he never made any effort to obtain such employment or compensation or perform any such service; and that libelant has not been in any manner damaged or injured or caused loss by or from any act or wrong of libelee in any manner; and that said libelant never notified or informed libelee when if at all or whether at all his alleged and pretended illness or his actual illness if any ended or was cured.

4. For a further separate and additional and alternative defense to said libel, the libelee avers, upon information and belief, that libelant did not fall or become sick or ill while upon said "Venezuela," but that, for the purpose, and with the intention of defrauding libelee and to collect or recover wages from libelee without rendering or performing the service under said articles, the libelant pretended that he was sick and that he could not be properly treated on board said vessel and demanded that he be given a permit to go to the Marine Hospital at Honolulu for treatment and that he be discharged from said vessel and paid his wages in full at Honolulu; and that libelant thereupon was, without the consent and against the wish of libelant, and only upon and because of his said demand, paid his wages in full at Honolulu and discharged from said articles before and by the United States Shipping Commissioner, and that said Shipping Commissioner certified upon said articles the said discharge of libelant and the payment of his said wages; and the said libelant was not thereafter and is not now entitled to have any further or other wages from libelee; and that said libelant was not ill or sick during the whole or any portion of the period of time of the said voyage for which he shipped on said vessel or to the end of the voyage of said vessel.

5. For a further alternative defense to said libel, the libelee alleges upon information and belief that the libelant, if ever in fact or at all ill or sick during said voyage or up to the time of the payment of his

wages in full and his discharge before and by the said United States Shipping Commissioner at Honolulu, on February 25, 1919, that libelant was not and did not continue ill or sick and was entirely able and competent to render and perform service as such seaman and had and did fully recover and get well from such illness or sickness and the same ended within two or three days after February 25, 1919, and that he was not thereafter sick or ill or suffering from any alleged illness or sickness which happened or occurred to him or while on said vessel; that he was discharged from said Marine Hospital as cured about February 27th, 1919, and that no liability or recovery from libelee should be allowed, if any at all, beyond the date of the discharge of libelant on about February 27, 1919, from said Marine Hospital in Honolulu, to which he went for treatment for his
14 asserted or pretended illness and from which he was so discharged at said time.

Wherefore libellee prays the Court that said libel be dismissed with costs to the libelee.

CHAS. J. HEGGERTY,
CHAS. J. HEGGERTY,
KNIGHT & HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for the Libelee.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

H. E. A. Railton, being duly sworn, says: I am the Auditor and Assistant Secretary of the Pacific Mail Steamship Company, libelee in the foregoing answer named. I have read the foregoing answer and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

H. E. A. RAILTON.

Subscribed and sworn to before me this 30th day of June, 1919.
[SEAL.] GENEVIEVE S. DONELIN,
Notary Public in and for the City and County of San Francisco, State of California.

Interrogatories Propounded to Libelant and Attached to and a Part of the Foregoing Answer.

The libelee hereby propounds and requires that the libelant make answer under oath to each of the following numbered "1" to "19," inclusive, interrogatories:

15 1. Please state particularly when you were taken sick, what the nature of your illness was, how it affected you, when and where it first affected you, and how, what are the symptoms, and what medical or other name, if you know, is it styled by.

2. How long did you remain in and when did you enter the Marine Hospital or any other hospital in Honolulu, and state fully and particularly what treatment was there given or prescribed for you and by what doctor or physician of such hospital you were there treated, and how long you were there treated.

3. State the day of the month on which you entered such hospital after leaving the "Venezuela," and how many days you were actually in such hospital being there treated, and what day of the month you left or were discharged from such hospital; and attach a copy of the certificate of your discharge therefrom, if you have any such certificate or paper given you by such hospital or its attendant therein.

4. State fully and particularly how and the circumstances under which and why you left or went on shore to said hospital.

5. State fully and particularly why you did not remain on board said "Venezuela" for treatment and for hospital treatment thereon and by the doctor and upon said vessel.

6. State fully and particularly what you did and where you lived or stayed in Honolulu from February 25, 1919, until you left Honolulu, and whether you were engaged in any work on land or sea during that period, and if so, what such work was and what compensation you received therefor.

16 7. State when and how you left Honolulu and came to San Francisco and when you reached San Francisco.

8. State fully and particularly where you went and what you did during the time you were in Honolulu after you left or were discharged from such hospital.

9. State fully and particularly whether you had been taken sick or become ill at any time within six months before you shipped on the "Venezuela" on said voyage, with the same illness or sickness, and what such illness or sickness was and how it affected you, and the times and places of such former illness or sickness, and whether you went or were sent to or treated therefor in any hospital, and if so what hospital, or by any doctor, and if so give his name and address.

10. State fully and particularly whether or not you were suffering from or afflicted with such or any illness or sickness when you shipped on said "Venezuela" or shortly before you so shipped.

11. State fully and particularly whether or not since February 25, 1919, you have worked or rendered any service as a seaman on any vessel or vessels, and if so, what vessels and when and where and for how long, in what position and what compensation you received therefor.

12. State fully and particularly whether since February 25, 1919, you have been employed or working in any employment on land or

wharf, and if so, what kind of employment, when and where and how long, and what compensation you received.

17 13. State fully and particularly whether you have been since filing the libel herein and if you are now working or employed in any service or employment on land or sea, on vessel or wharf, and if so where and what service and what compensation you are being paid.

14. State fully and particularly whether or not you have within the two years prior to shipping on the "Venezuela," brought a libel against any vessel or vessel owner for wages or expenses of illness occurring during your sea service, and if so, when and in what court, and against what vessel or owners of vessels, and how often.

15. State fully and particularly in what service and on what vessel, and where, you were last employed as a seaman prior to shipping on the "Venezuela," what service you were employed in, and why you left or quit such service, and where you quit such service, and whether before the end of the voyage for which you shipped, and whether you quit or left such vessel because of having been taken sick or ill while on such vessel, and what was the nature of your illness, and whether or not you went to a marine or other hospital, and if so when and where, and how long were you under treatment therein.

16. How many times during the year or period of one year just prior to shipping on the "Venezuela" you went or were sent to or treated in any marine or other hospital, or were treated by any doctors or physicians and how many and for what cause or illness?

18 17. State fully and particularly why you did not report to libelee or its agency at Honolulu or elsewhere for service or that your illness was cured or that you were discharged from the Marine Hospital or the hospital to which you went when you went ashore at Honolulu from said "Venezuela."

18. To what physician and where did you pay or expend $25 for "Medical Attendance at Honolulu"?

19. Where and to whom did you pay $44 for subsistence at Honolulu, for 11 days?

The libelee hereby requires that the libelant make full, particular and explicit answer under oath to each one and to all of the foregoing interrogatories, numbered "1" to "19," inclusive.

Dated June 30th, 1919.

CHARLES J. HEGGERTY.

(Signed) CHARLES J. HEGGERTY.
KNIGHT & HEGGERTY.

(Signed) KNIGHT & HEGGERTY,
Proctors for Libelee.

[Endorsed:] Due service and receipt of a copy of the within Answer and Interrogatories attached is hereby admitted this 3d day of July, 1919.

F. R. WALL,
Proctor for Libellant.

Filed July 3, 1919. W. B. Maling, Clerk, by C. W. Calbreath, Deputy.

In the United States District Court in and for the Southern Division of the Northern District of California, First Division.

(In Admiralty.)

No. 16600.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP CO., a Corporation, Libelee.

Answers of Libelant to Interrogatories Propounded to Him by Libelee.

Comes now the libelant above named and makes answer to the interrogatories propounded to him by libelee at the end of said libelee's answer. Said answers follow, and each answer is numbered to correspond to the interrogatory to which it is an answer to wit:

1. Began to feel badly about four days before reaching Honolulu. Went to the ship's doctor for medicine about two days before getting into Honolulu. The way my illness affected me said symptoms were that I had bad headaches, and fever and sweated in bed. I don't know what name my sickness is styled by. The ship's doctor told me I had lumbago and kidney trouble.

2. Entered the Marine Hospital the same day the ship arrived there. I remained there two nights and a day. The only
20 treatment there given me was salts and asperin tablets. The marine doctor treated me there. One or two days after I left the Marine Hospital, I went to Dr. Walters in Honolulu and was treated by him daily for eleven or twelve days. He gave me medicine right along, but I don't know what kind. He told me he was treating me for malarial fever.

3. Attached hereto is a copy of the certificate of discharge referred to, marked Exhibit "A," and made a part of the answer to this interrogatory. The remainder of this interrogatory is fully answered in "2," except that I do not know the exact day of the month; I am pretty certain it was February 25, 1919. I know it was the same day the vessel arrived in Honolulu.

4. The morning of the day the ship got into Honolulu, I went to see the ship's doctor while the ship was outside, and told him I was feeling miserable and wanted to go to the hospital. He said all right. After the ship got alongside the wharf, I went to the doctor and the purser and they told me to go up to the custom-house and wait for the captain to come up there and I could get a permit for the hospital. I went up to the custom-house and waited about half an hour and the captain didn't come. I was feeling miserable and hired a taxicab and went out to the Marine Hospital and got some medicine and returned to the custom-house and waited there about three-quarters of an hour more, and then the captain came, and I was then taken back down on board the ship and there given
21 by the captain a permit to go to the hospital.

5. Because I felt I could not be cured on board ship and wanted to go to the hospital and because the ship's doctor was willing that I should go there and because the master of the vessel consented to my going there and gave me a permit to go there.

6. The evening of the day the vessel got to Honolulu (February 25th, I think) I went to the Marine Hospital and stayed there two nights and a day, leaving February 27th, I think. Then I went to the Blaisdell Hotel, Fort Street, and stayed there until the morning of the first of March, when I went to the Majestic Hotel, corner Fort and Beretania Streets, and stayed there eight or nine days, when I left Honolulu on the S. S. "Bartlett" as a workaway. From the time I left the "Venezuela" until I went on the "Barlett" I did no work of any description anywhere. I was too sick to work. I was so sick on the "Bartlett," I was able to do very little work.

7. I left Honolulu for San Francisco as a workaway on the steamship "Bartlett" on the 9th or 10th of March, 1919, and arrived in San Francisco on her on March 20th or 21st.

8. This is fully answered in answer to "6."

9. I had no previous illness or sickness of any kind, except occasional slight headaches, within six months before I shipped on the "Venezuela," and during such six months I was not in any hospital or under the treatment of any doctor.

10. I was not sick or afflicted with illness of any kind
22 at the time or shortly before I shipped on the "Venezuela."

11. Came from Honolulu to San Francisco as a workaway, no compensation, on the steamship "Barlett," as I have already said. Received no compensation, and did very little work. Since then I have done no work or rendered any service as a seaman or in any other capacity on any vessel or elsewhere up to the present time. I have earned nothing since I left the "Venezuela" to the present time.

12. Fully answered in "11."

13. Fully answered in "11."

14. I have never before in my sixteen years going to sea brought a libel against any vessel or vessel owner for wages or expenses of illness occurring during my sea service or occurring in any other way.

15. Prior to shipping on the "Venezuela," I was last employed on the "Ardmore," of the Standard Oil Company, as a fireman. She was running from San Francisco to West Coast of South America and Gulf of Mexico. I was discharged from the "Ardmore" at Tampico, Mexico, by order of the United States Consul there, and furnished with transportation and expenses back to San Francisco, before the end of the voyage, as the result of the consul's decision that nearly all of the crew, including myself, were entitled to be discharged because of the master's drinking habits and maltreatment of the crew by him while intoxicated. I did not quit or leave the "Ardmore" because of having been taken sick or ill while on her nor did I go to any Marine Hospital from her.

23 16. Once I was in the Marine Hospital at San Francisco two or three days during the latter part of May, 1918, and was during that time treated by the doctor there for gonorrhoea.

17. I did report to the libelee's agency in Honolulu. I went to the office of Mr. Gootz (as nearly as I can spell it), the libelee's agent, five or six times, and told him I was sick and unable to work and asked what they were going to do for me and asked to be sent to San Francisco. I was always put off and could never get any definite answer, although at one time he did give me the impression he was going to send me, but the last time he said he couldn't do anything. I could not tell him my illness was cured, because it wasn't. I did tell him I had been discharged from the Marine Hospital, and showed him my discharge.

18. Dr. St. D. G. Walters, 1067 Alakea St., Honolulu, T. H.

19. The Blaisdell Hotel, The Majestic Hotel and to various restaurants, the names of which I do not know, all in Honolulu.

Dated: July 4, 1919.

J. LUCAS,
Libelant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

J. Lucas, being first sworn, deposes and says: That the answers given above by him to the interrogatories attached to the answer of libelee in the above-entitled cause of libel are, and each is, true.

J. LUCAS.

24 Subscribed and sworn to before me this 5 day of July, 1919.

CHARLES EDELMAN. [SEAL.]
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed:] Received a copy of the within answers of libelant to interrogatories, etc., this 5th day of July, 1919.

CHAS. J. HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Libelee.

Filed Jul. 8, 1919. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

In the District Court of the United States for the Southern Division of the Northern District of California, First Division.

(In Admiralty.)

No. 16600.

J. Lucas, Libelant,

vs.

Pacific Mail Steamship Company, Respondent.

25 September 13, 1919.

(*Testimony Taken in Open Court.*)

Counsel Appearing:

For the Libelant: Frank R. Wall, Esq.
For the Respondent: Charles J. Heggerty, Esq.

Testimony of W. H. McArthur for Respondent.

W. H. McArthur, called for the respondent, sworn.

Mr. Heggerty:

Q. You are the United States Shipping Commissioner for the port of San Francisco, and have been for some years past?

A. Six years.

Q. Have you with you the articles of the steamship "Venezuela" on the voyage on which J. Lucas, the libelant in this case, shipped?

A. Yes.

Q. Those are the original articles returned to you after the ship has returned?

A. Those were signed for the voyage beginning February 17, of this year.

Q. I will ask you to refer to page 4, to No. 43.

A. Yes.

Q. On these shipping articles I will read the entry, 43; under the title at the head, "Signature of seaman," "J. Lucas." Under the title "Birthplace," "Greece." Under the title "Age," "37." Under the title "Height," "5 feet 10 inches." Under the "Descrip-

tion," "Light, dark hair." Under the title "Wages per month," "$75." Then following that, in stamp, "February 25, 1919," and then in writing signature, "J. I. Arcia," then below, "Discharged at Honolulu, Acting Shipping Commissioner." And then "Capacity," "Water-tender, conduct very good." "Date of the Articles," "San Francisco, February 17, 1919," and the voyage terminated at San Francisco, April 25, 1919, G. W. Yardley, Master.

We offer the original articles in evidence, if your Honor please, in behalf of the respondent and refer to that portion especially which I have read into the record, and ask your Honor's permission that Mr. McArthur may take them back with him.

Mr. Wall: Hadn't you better say what the voyage was for?

Mr. Heggerty: The articles show, if your Honor please, that the voyage is from the port of San Francisco to Hong Kong, China, and such other ports and places in any part of the Pacific Ocean as the master may direct, and back to San Francisco, or final port of discharge in the United States, for a term or time not exceeding six calendar months.

On page 12 of the official log-book of the "Venezuela," the entry date of February 19, 5 p. m., latitude 35 degrees 46 minutes north, longitude N. H. 30 West.

Mr. Wall: We enter an objection to that as immaterial and irrelevant, and a matter which does not prove or tend to prove any of the allegations in the libel.

The Court: It will be admitted.

Mr. Heggerty: After what I have already read, J. Lucas, water-tender, hereby fined two days' pay for not obeying orders and for insolency to the third officer while swinging out life-boat during fire drill. Signed, G. W. Yardley, Master, R. R. Drummond, First Officer, Fred M. Kramer, Third Officer. Then in the log-book of the "Venezuela" on page 28, under the title "In account J. Lucas, Cash Account, Paid off before shipping commissioner at Honolulu, $24.50, Jerry Lucas." I offer these two log-books in evidence, if your Honor please, and call attention especially to the portions I have read and ask that the commissioner be allowed to take them with him. Is that satisfactory, Mr. Wall?

Mr. Wall: Yes. Anything further?

Mr. Heggerty: That is all.

Cross-examination.

Mr. Wall:

Q. Mr. McArthur, will you please state to the Court what the custom and usage is in regard to seamen who fall sick while on the voyage and are sent to the hospital at an intermediate port, for instance, suppose a vessel shipped a seaman in Seattle for a voyage to Yokohama, for a voyage to Callao, by way of San Francisco, and the vessel put into San Francisco, and a man was sent to the hospital here sick.

Mr. Heggerty: We object to the question as having nothing to do with this case.

Mr. Wall:

Q. As to paying him off and giving him a discharge.

The Court: The objection will be overruled.

28 Mr. Heggerty: We object to the question as immaterial, irrelevant and incompetent, and improper. The question of custom is not involved here.

The Court: The objection will be overruled.

A. In a case such as you state, the shipping commissioner usually notifies the shipmaster of the law, in the case of a seaman who fell sick or was injured in the service of the vessel, namely, that they are entitled to wages, maintenance, and care for the period of the voyage, and the master is advised to leave with the shipping commissioner the amount of the seaman's earnings up to the date of the departure of the ship, and he is also advised that at the end of the voyage there will still be an amount to be settled for, as the seaman will be entitled to the amount of wages accruing to him during the balance of the period of the voyage, less whatever he may have had in the meantime, if anything, and settlements are usually made on that basis.

Mr. Heggerty: We move to strike out the answer, if your Honor please, as incompetent, not within any issue in this case, and based upon a state of facts and assumptions not included in the issues or evidence in this case.

Mr. Wall:

Q. What is the usage or custom in regard to discharges in such a case?

A. You mean certificates of discharge?

Q. Yes.

A. A seaman in a case like that will be entitled to a certificate of discharge showing the length of his actual service on the ship,

29 and the other particulars called for in the form of a certificate of discharge.

Redirect examination.

Mr. Heggerty:

Q. That voyage as to which you testified, Mr. McArthur, was a voyage where the seaman was put ashore at a foreign port, was it not, Callao?

Mr. Wall: No, San Francisco was my question.

Mr. Heggerty: I will withdraw the question.

Q. Now, Mr. McArthur, you are familiar with the steamer "Venezuela," are you not?

A. Yes.
Q. You know that she carries a ship's doctor?
A. Yes.
Q. And did on this voyage?
A. I presume so.
Q. The name appears on the articles, "Dr. Rickey," as you remember?
A. I am not familiar with that fact, but I presume it to be a fact.
Q. She also carries hospital accommodations for members of the crew and passengers taken sick on the voyage?
A. I don't know anything about that.
Q. But that is a requirement of all passenger vessels by the law, is it not?
A. It is, but I have no knowledge of these requirements, nor as to the fact as to whether or not they are complied with; that matter does not come within my purview at all.
Q. Now, then, would you tell the Court, Mr. McArthur, what are the requirements in order to get into the Marine Hospital at any port?
30 A. A seaman usually reports to the master of the ship that he is sick and wishes medical attendance; the master, in that case, gives him a permit, a hospital permit, and then he reports to the Marine Hospital authorities in the port, and they examine the man, and if they find him entitled to medical attendance they give him medical attendance, either out-door attendance or admit him to the hospital, as the case may be.
Q. Mr. McArthur, will you state to the Court whether or not a seaman on board an American ship at an American port has the right to leave the ship and go on board and demand his discharge whenever he desires to do it?

Mr. Wall: I submit, if your Honor please, that the voyage of the ship must be stated in the question.
Mr. Heggerty: Then I will state it to your satisfaction.

Q. When the "Venezuela" reached Honolulu, will you state to the Court whether or not J. Lucas, as water-tender on the ship, had an absolute right to go ashore, leave the ship, and demand his discharge at that port under these articles?
A. Under these articles and the law, ordinarily I would say no.
Q. Why would you say no? How could the ship keep him on board?

Mr. Wall: We object to this as being a matter of law.
Mr. Heggerty: Is it not a fact that under the Seamen's Act
31 that any seaman on board a vessel has the right to demand his discharge and go ashore at any American port at which the vessel touches?
Mr. Wall: I object to that as not asking for a fact, but asking for a construction of the Seamen's Act that the Court has to make. I am perfectly willing to let Mr. McArthur answer the question, but ultimately the Court will have to pass on that.

Mr. Heggerty:

Q. Do you know Mr. Lucas personally?
A. No.
Q. You don't know whether he is working now, or not, do you?
A. No, I don't know anything about him.

Mr. Heggerty: This entry which I read, your Honor, I want to call your Honor's attention to the fact it is not an entry made by any officials of the company, but by the United States Shipping Commissioner. That is the entry of February 25, 1919, discharged at Honolulu, J. I. Arcia, United States Shipping Commissioner. That is all.

Mr. Wall: That is all.

Mr. Wall: I will offer the deposition of the libelant, Lucas, in evidence on his behalf.

Mr. Heggerty: I object to that portion of the deposition of the libelant Lucas containing Libelant's Exhibit 4, found among the exhibits attached to Lucas' deposition, and also Libelant's Exhibit 5, on the ground that they are incompetent, hearsay, self-serving declarations, and are not evidence tending to show in any way that
32 the libelant here was ill or was treated for any illness, that they are not the best evidence, improper, and should not be allowed in evidence as a part of the deposition of the witness Lucas.

The Court: Of course, they cannot be received as evidence of the libelant's illness, but they may be received as evidence of his good faith; he is charged with having pretended to be sick.

Mr. Wall: That is the only purpose they were introduced for.

Mr. Wall: That is our case.

Mr. Heggerty: Now, if your Honor please, I will offer in evidence a certified copy form 713 of the United States Shipping Commissioner's Mutual Release, and as it is short I will read it and file it as evidence. (Reading.)

Mr. Wall: If your Honor please, I object to that as an ex parte statement, and no opportunity to cross-examine as to the entries. I suppose it will be admitted subject to the objection.

Mr. Heggerty: If your Honor please, we attach to our answer certain interrogatories to the libelant and the respondent filed his sworn answers to them. I do not understand that I am required to offer them all or am bound by them. I will offer in connection with the deposition of Lucas, the cross-examination of Lucas, and for the purpose of attacking his credibility his answers to interrogatories No. 1, 2 and 4. We also introduce the evidence taken before the commissioner on behalf of the respondent. We rest.

33 [Endorsed] Filed Dec. 11, 1919. W. B. Maling, clerk, by C. M. Taylor, deputy clerk.

In the District Court of the United States for the Southern Division of the Northern District of California.

Before Francis Krull, Esq., U. S. Commissioner.

(No. 16,600.)

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, Libelee.

Depositions on Behalf of Libelant.

Monday, August 18, 1919.

Counsel Appearing:

For the Libelant: F. R. Wall, Esq.
For the Libelee: Charles J. Heggerty, Esq.

Deposition of J. Lucas, in His Own Behalf.

J. LUCAS, the libelant, sworn.

Mr. Wall:

Q. You shipped as fireman on the "Venezuela"?
A. As a water-tender.
Q. As water-tender, on the 18th of last February, did you?
A. Yes.
Q. For a voyage from San Francisco to points in the Orient
34 and return to San Francisco or final port of discharge?
A. Yes.
Q. With wages $75 a month?
A. Yes.
Q. State what happened to you after you left San Francisco, so far as your health was concerned? Tell what happened to you after you left San Francisco, so far as your health was concerned?
A. Well, sir, just out of Frisco I felt sick and I went to the doctor.
Q. You went up to the ship's doctor?
A. Yes.
Q. What did you tell him?
A. I told him what was wrong with me, headache and kind of fever, and chills, and sweating, and he gave me some medicine; I couldn't tell what it was.
Q. What sort of sweating did you tell him?
A. I told him I was sweating and had headaches and chills; that is about all.
Q. How many times did you go to see the doctor on the ship?
A. Three or four times.

Q. The last day before getting into Honolulu, did you go to see him that day?

A. I did.

Q. What did you say to him then?

A. I didn't tell him any more—I told him I didn't feel any better, that is all.

Q. During any of these visits to the doctor, did you tell him anything about your wanting to go to the hospital on shore?

A. Yes, I told him—I don't remember whether it was the day before or day after, I don't remember exactly, I told him if
35 I did not feel any better I would like to get better treatment, and he said all right.

Q. The day before you got into Honolulu or the day that you got into Honolulu?

A. The day before, as far as I remember.

Q. After that, what was done about your going ashore?

A. Well, the day we went into Honolulu I went up to him and I told him I didn't feel any better, so I would like to get better treatment, and he said it was all right; he said to me, "Do you think you won't be able to make the trip?" and I said, "No, I am badly fixed"; still, I was doing my job; I was doing my work the last day I went into Honolulu.

Q. Who else did you see on the ship?

A. No one else.

Q. Did you go to the purser at all?

A. I did not go to the purser till the last day.

Q. That is what I am asking about, the last day.

A. Yes.

Q. What did you tell the purser?

A. I saw the purser there and I asked him if the receipt for the hospital was delivered to him by the doctor, and he said, "No, it is up to the custom-house; the captain will give it to you up in the custom-house; he will wait for you," he said.

Q. Had you said anything to the doctor about any receipt or permit for the hospital?

A. Yes, the day we went in.

Q. What did you say to him about that?

36 A. I asked for the permit to the hospital, and he says, "Yes, all right, if it is necessary."

Q. Then you went to the purser and asked him if he had the permit?

A. I did. I met the purser on the gangway there.

Q. Then did you go ashore?

A. Yes.

Q. What did you do after you went ashore?

A. I went right away up to the custom-house.

Q. Was the captain up there?

A. No.

Q. How long did you wait at the custom-house?

A. I waited half an hour, probably, from that.

Q. About what time of day was it when you went up there?

A. I could not tell you exactly.

Q. About what time of day was it, as near as you can remember?

A. It was pretty close to noon, anyhow.

Q. Then after you waited half an hour what did you do?

A. I couldn't wait longer; I was sick, and I had to go to the hospital; I hired a taxi to go to the hospital and get some medicine, and then I returned back to the custom-house.

Q. How long did that take you?

A. Probably half an hour, or probably a little less; I don't know exactly.

Q. Then when you came back did you go to the custom-house?

A. Yes.

Q. How long did you wait there then?

A. About half an hour more, till the captain came.

Q. After the captain came, what was said and done there at the custom-house?

37 A. He didn't say nothing to me, but the purser told me to go aboard the ship and they would give me the permit aboard the ship, for the hospital; the captain took me down to the ship and they gave me a permit.

Q. When you got there, did you ask the captain for a permit—when you got to the shipping commissioner did you ask the captain?

A. No; I did not ask the captain; only I asked the purser there, and the purser said he was waiting for the captain to give me the permit, that was all.

Q. You say the purser afterwards told you to go down to the ship and get the permit?

A. Yes, afterwards, when the captain came up there then they took me down to the ship and gave me the permit.

Q. How much money did you get at the shipping commissioner's office?

A. I think it was somewhere around $24, or something like that; I don't remember close.

Q. Was any discharge given to you then at the shipping commissioner's office?

A. No.

Q. Was anything said to you by the shipping commissioner?

A. Not a thing.

Q. By the shipping commissioner or the captain about being paid off and being discharged?

A. No; they told me to sign for my wages; the shipping commissioner called me over and he says, "Sign for your money, your wages, from San Francisco to Honolulu."

38 Q. Did the shipping commissioner, or anybody else, give you a discharge?

A. No, not a one, that I know of.

Q. Did you sign off on the shipping articles?

A. No.

Q. Did you sign anything there except the receipt for the amount of money you received?

A. No, I signed just for the amount of money.

Q. That you got?
A. That is all.
Q. During the whole of the voyage, to the time you arrived at Honolulu, did you ever see the captain on board the ship at all on that voyage, except at the time that you were logged?
A. Yes, I used to see him in the morning going around for inspection.
Q. Did you ever have any talk with the captain about anything, except about being logged?
A. No, that is all.
Q. Did you ever at any time ask the captain to discharge you at Honolulu?
A. No; I never saw the captain—I only asked for the permit to the hospital because I was in bad condition.
Q. You never at any time said anything to the captain aboard ship or at the shipping commissioner's office, about wanting to be discharged at Honolulu?
A. No.
Q. You went to the Marine Hospital in Honolulu after you got this permit, did you?
A. Yes.
Q. And you got that down on board ship?
A. Yes.
39 Q. And that was after you got your money at the shipping commissioner's office, was it?
A. Yes.
Q. Then where did you go?
A. After I got the discharge I went right straight to the hospital.
Q. How long did you remain at the hospital?
A. Two nights and one day.
Q. Then where did you go?
A. They put me out of the hospital because the doctor thought there was nothing wrong with me.
Q. Then where did you go?
A. I went to some hotel there for a night, and then I saw it was too much, and I slept in one hotel one night and then took a week in another.
Q. When you left the hospital did you receive that paper?
A. I did.
Q. Did you get an other discharge from the hospital, except that paper?
A. That is all.

Mr. Wall: I offer that in evidence at Libelant's Exhibit 1.

(The paper is marked Libelant's Exhibit 1.)

Q. When you went to this hotel that night, was it the Blaisdell Hotel you went to?
A. Yes, the first night.
Q. Is that the receipt for the amount of money you paid them?
A. Yes, for the night.

Mr. Wall: I ask that that be marked Libelant's Exhibit 2.

(The paper is marked Libelant's Exhibit 2.)

Q. After that, where did you stop at night?

A. On the next one there, at that hotel..

10 Q. You stayed there a week?

A. Yes.

Q. Did you pay him that $4?

A. I did.

Mr. Wall: I offer that as Libelant's Exhibit 3.

(The paper is marked Libelant's Exhibit.)

Q. How long did you stay in Honolulu after you came out of the Marine Hospital?

A. Between eleven and twelve days, something like that.

Q. During that time, how much did you have to pay for your food daily?

A. About $2 a day—close to $2 a day.

Q. How much did you pay for your room when you not stopping at the Majestic Hotel?

A. Fifty cents a night.

Q. During the time that you were in Honolulu, tell what happened so far as your visiting the agent of the Pacific Mail Steamship Company was concerned?

A. I went down there and asked Mr. Gootz for passage back to San Francisco.

Q. You went to the agent of the Pacific Mail Steamship Company?

A. Yes.

Q. When did you first go there?

A. The second day out of the hospital.

Q. How often did you go there all together?

A. I used to go there once a day, because he told me to call around.

Q Tell what happened, from the time you first went there—when you went there what did you tell him and what did he tell you?

A. He told me, "I will send you over as quick as I get a

11 chance," and he tried on a couple of ships and he said there was nothing doing; then he sent me up to the Shipping Board office, by his name, and the Shipping Board man told me he had too many of his own fellows, Shipping Board fellows, to send to San Francisco, and my money was getting little, so at last I took this "Bartlett" and worked my way coming over.

Q. What was the last thing that Mr. Gootz told you.

A. He told me he could not send me before his ship came; that would be the 20th or the 30th, somewhere around there, something like that, one of his own ships, that is the "Santa Cruz" or "Ecuador." I don't remember exactly which one it was; there were two coming in, but they were too late for me.

Q. Finally you shipped on the "Bartlett"?

A. Yes.

Q. What did you ship as on the "Bartlett"?
A. A workaway.
Q. Did you get paid anything for the trip?
A. Not a cent.
Q. What time did you arrive in San Francisco about?
A. About the 20th of March.
Q. Between the 20th of March and the 25th day of April, 1919, did you do any work of any kind?
A. Not up to date; still under doctor's treatment; I might be able to do some work next week, I guess.

(It is agreed that the 25th of April was the time the "Venezuela" arrived in San Francisco and ended the voyage.)

42 Q. While you were in Honolulu, what was the fact as to visiting any other doctors in Honolulu?
A. How do you mean?
Q. What was the fact as to whether you visited any doctor in Honolulu or were under any treatment in Honolulu?
A. I visited Dr. Walters.
Q. How often were you there?
A. I was there nearly every day, or every other day.
Q. Did Dr. Walters give you any paper to present to the doctor in San Francisco?
A. Yes.
Q. I show you these two sheets of paper and ask you if these are the ones he gave you?
A. Those are exactly the ones.

Mr. Wall: I offer these as Libelant's Exhibit 4.

(The paper is marked Libelant's Exhibit 4.)

Q. When you arrived in San Francisco were you under treatment from any doctor here?
A. Yes.
Q. What was his name?
A. Right down at the Marine Office here.
Q. In the Appraiser's Building?
A. Yes.
Q. Then did you go to any other doctor?
A. Afterwards, yes, I went to Doctor Victors afterward.
Q. How long were you under treatment by Dr. Victors?
A. Up to the day he discharged me.
Q. Did he give you that paper?
A. Yes.

Mr. Wall: I offer that as Libelant's Exhibit 5.

(The paper is marked Libelant's Exhibit 5.)

Mr. Heggerty: I object to that as incompetent and hear-
43 say, and not the best evidence.

Mr. Wall:

Q. What ship were you on before the "Venezuela"?
A. The "Ardmore," a Standard Oil boat.
Q. Did you get a discharge from that vessel?
A. I did, by the American Consul.
Q. Is that the discharge?
A. That is it.

Mr. Wall: I offer that in evidence.

(The paper is marked Libelant's Exhibit 6.)

Cross-examination.

Mr. Heggerty:

Q. You were working all of the time on the ship?
A. Yes.
Q. What did the doctor say to you about being treated on the ship?
A. He did not tell me exactly about treating on the ship the last day, but he told me the day before we got in, he told me he would fix me up, and to make the trip; I told him if I did not feel any better than I do now I don't think I will be able to go any farther than Honolulu.
Q. He did tell you if you would lay off work——
A. He did not tell me to lay off; he never did.
Q. Did he tell you that if you stayed on the ship and he continued to treat you, you would be all right in a little while?
A. Well, yes, but he treated me for three days, between three and four days.
Q. Now, as I understand it, the thing that you told the doctor was the matter with you was headache?
A. Headache and chill, and fever and sweats at night.
44 Q. Did he take your temperature, or anything?
A. He did take my temperature.
Q. These sweats you had, you say, were at night?
A. Yes.
Q. When you were in your berth?
A. Yes.
Q. You knew they had regular hospital spaces and equipment there for anybody that was ill, did you not?
A. They have got it, as I understand.
Q. You knew you could have been treated there, did you not, on board the ship?
A. Yes, aboard the ship.
Q. You wanted yourself to go to the hospital, did you not?
A. No, I was in bad condition, so the doctor was willing to give me the hospital receipt.
Q. I mean, it was you that asked them to go to the Marine Hospital?

A. Yes, it was.

Q. You wanted to be discharged, did you not, from the vessel?

A. No, I wanted to be sent to the hospital.

Q. They did not want you to go to the hospital, the doctor wanted to treat you on board ship, did he not?

Mr. Wall: I submit he said the doctor said he would give him a permit.

A. That is all right, the doctor told me, he said, "If you are as bad as you are now," he said, "you can go to the hospital in Honolulu", that is all; he said he tried all the medicine.

Mr. Heggerty:

Q. But you wanted, yourself, to go to the hospital, didn't
45 you, at Honolulu?

A. I was badly sick, Mr. Heggerty; I was not fit to work.

Q. But I say you wanted to go yourself, to the hospital, you wanted to leave the ship and go to the hospital, didn't you?

A. Well, the doctor agreed, probably he knows more than I do.

Q. I mean you, yourself, wanted to go to the hospital, and told him you wanted to go—you wanted to get a permit to go to the hospital at Honolulu, did you not?

A. I asked the doctor for the permit; yes.

Q. You told him you wanted to go to the hospital and leave the ship at Honolulu, did you not?

A. Yes.

Q. Now, then, you did not want to make the round trip, did you, on the "Venezuela"?

A. I did not.

Q. No?

A. I was sick; how could I make the round trip?

Q. But you say you did not want to make the round trip, because you said you wanted to go to the hospital, did you not?

A. Yes.

Q. Now, when you went up to the Shipping Commissioner's, did you sign the regular form of discharge in the Shipping Commissioner's books?

A. No.

Q. You did not?

A. No; I just signed for my wages.

Q. Didn't you sign in his book?

46 A. I signed for the wages.

Q. Did you sign in his book?

A. I signed in his book, yes; I signed the receipt for the $23 or $24 that he gave me.

Q. You signed the regular form of discharge before the shipping commissioner?

Mr. Wall: I submit that the witness has stated all that he signed.

Mr. Heggerty: I am cross-examining him, and I have a right

to go into the details; you should not do anything but make your objection.

Q. You signed the regular form of discharge in the Shipping Commissioner's book, did you not?

Mr. Wall: I object to that as not proper cross-examination. He has stated that all he signed ——

Mr. Heggerty: I object to your stating it to the witness; that is not a part of the objection.

Mr. Wall: Yes, it is.

Mr. Heggerty: It is simply telling this witness what to answer.

Mr. Wall: I am going to put in my objection.

Mr. Heggerty: I cannot help it, but I object to your doing so as you are.

Mr. Wall: I object to it as not proper cross-examination, as the witness has already stated that he only signed for his wages. Now, as to whether that was a discharge, the best evidence is the production of that document; if Mr. Heggerty contends that was not such a release, but a discharge, it is objected to upon the ground that what he asked for is not the best evidence.

17 Mr. Heggerty: Now, Mr. Lucas, did you know what kind of a book you were signing?

A. Mr. Heggerty, the only thing I know is I was told to sign for the receipt of the wages from Frisco to Honolulu.

Q. You signed a discharge from the ship before the Shipping Commissioner, did you not?

A. I did not sign any discharge.

Q. Before this occasion?

A. No.

Q. You know what a form of discharge is, don't you?

A. I do, but I did not sign no discharge.

Q. Didn't you sign the regular form of discharge in the United States Shipping Commissioner's book in Honolulu?

A. I signed it the way I told you, for the wages.

Q. But I am saying, was not that document that you signed there in the Shipping Commissioner's book the regular form of discharge of a seaman from a vessel?

A. I don't know exactly, because I was not asked to sign any discharge, and I didn't; I was not asked to sign any discharge; the shipping commissioner—what is his name, in Honolulu—he called me over, and there was witnesses there, he says, "Lucas, come here and sign for your wages."

Q. Didn't you tell him you were going to the hospital?

A. He knew it; he knew it before that.

Q. Did you tell him you wanted to leave the ship and go to the hospital?

A. I did not tell him I wanted to leave the ship; I told
18 him I was in bad condition, and I am going to the hospital because I ain't fit to work.

Q. You told him you were not going out from Honolulu on the "Venezuela," did you not?

A. I did not tell him; he did not ask me.

Q. You did not?

A. No; he never asked me no questions; how could I say I was not? Nobody asked me any questions.

Q. Now you say the doctor at the Marine Hospital turned you out of the hospital because he said there was nothing the matter with you?

A. Yes. Doctor Hooper said the only thing I wanted was fresh air; he said, "That is all you need," and he said, the company's first boat would take me to San Francisco.

Q. Then when you went to the agent, he wanted you to wait there until one of the ships came in, one of their own boats, did he not?

A. Mr. Goetz, he told me, he says he tried to put me on the "Enterprise" and some other boats, but he couldn't do it; and he told me I would have to wait until one of their own boats arrived.

Q. What time was it that you got into the hospital the first day that you went there?

A. I don't remember exactly; I couldn't tell.

Q. Was it near evening?

A. The first time I think it was about noon; I couldn't tell.

Q. Then you simply went up there and got some medicine?

A. Yes, but I don't remember what time it was.

49 Q. You know it was around noon or night?

A. It was somewhere around one o'clock or after twelve, or before. I don't know exactly.

Q. Now, then, after you signed the book in the Shipping Commissioner's office, you then went to the hospital did you?

A. Yes.

Q. Then what time was that of day, about?

A. I don't remember, Mr. Heggerty.

Q. Was it toward dinner time, toward five o'clock?

A. I don't remember, Mr. Heggerty; I have not the faintest idea about it.

Q. You know it was in the afternoon, don't you?

A. When I signed for my wages?

Q. Yes.

A. I think it was before noon.

Q. Before noon?

A. Yes.

Q. Then when you went to the hospital——

A. (Intg.) I don't remember whether it was afternoon or before noon; it was during the day, the day we got in.

Q. When you went to the hospital, where did you go?

A. To one of the offices in the hospital.

Q. Did the doctor examine you?

A. No; the doctor only looked at me, and he says—he asked me what was wrong with me, and he gave me some kind of tablet; he

said, "I can't receive you here without a receipt from the skipper of the ship."

Q. Then you stayed there that night, didn't you?

A. No, I came down to the custom-house again.

Q. That is what I am trying to get at. Now, the second time you went back to the hospital, what time of day was that, about?

50

A. I don't know; it was late; but I couldn't say, exactly, what time it was.

Q. You stayed at that hospital one night, did you?

A. Yes, that night and the next night.

Q. Did the doctor examine you that night?

A. No.

Q. Did he examine you the next day?

A. Yes, the next day.

Q. Then you stayed there that night, did you, the second night?

A. Yes, I stayed the second night.

Q. You went out on the morning of the second day?

A. On the morning of the second day.

Q. The $24 you say you got from the purser was paid by the Shipping Commissioner to you, was it?

A. Yes.

Q. You were not entitled to that amount of wages at that time, were you, at that port?

Mr. Wall: I object to that as not proper cross-examination and nothing to do with the case by any possible stretch of imagination.

Mr. Heggerty: Will you answer the question?

A. I know I got something like that, but I don't know how much it was.

Q. You left here on February 15, did you not—you left the port of San Francisco?

A. Yes.

Q. Now, then, when you got the $24 there, that was not the amount that you were entitled to receive at that port, was it?

51

Mr. Wall: I object to that as not proper cross-examination, and as asking for a conclusion of the witness, and asking him to decide as a matter of law what the Court will have to decide.

A. How is that again?

Mr. Heggerty:

Q. I will ask you again: You left here, you joined the ship on the 15th of February, did you not?

A. Yes.

Q. You landed at Honolulu and went to the Marine Hospital on what date?

A. I don't remember.

Q. You have got some idea?

A. The 27th, or something like that.

Q. You know the day you went there, don't you?
A. Yes.
Q. You left there on the 25th, did you not?
A. Yes.
Q. You went to the Marine Hospital on the 25th, did you not?
A. 25th to the hospital.
Q. You went to the Marine Hospital on the 25th?
A. Yes.
Q. Your wages were $75 a month?
A. $75 a month.
Q. You were paid $24.50, were you not?
A. Something like that, Mr. Heggerty.
Q. By the Shipping Commissioner?
A. Yes.
Q. Now, Mr. Lucas, what was it you said the ship's doctor said—do you know his name, the name of the ship's doctor?
A. I don't know.
Q. What was it he told you was the matter with you from your statement of your symptoms?

52 A. He said it was a kind of cold and lumbago, bad cold, he said that would affect my nerves; that is what the ship's doctor told me, and he told the captain the same thing, too.

Q. How do you know that? I thought you said you did not see the captain?
A. When the captain took me back on the ship, and he gave me the permit to go to the hospital, he went down to the second deck and he asked the doctor—he said, "Doctor, I would like to know what is wrong with this man," and the doctor, he came down to the purser's office, before he gave me the receipt to go out to the hospital, he said, "That man has got a bad cold and he has got lumbago."
Q. What did the doctor in Honolulu tell you he was treating you for?
A. He did not tell me what he was treating me for.
Q. That is, Doctor Walters?
A. Doctor Walters told me he treated me for—the discharge has got it.
Q. I mean Doctor Walters.
A. Doctor Walters, he told me he treated me for malaria, bad cold and malaria.
Q. Now, before you signed on for this voyage on the "Venezuela," had you been to the Marine Hospital anywhere else?
A. No.
Q. Were you ever at the Marine Hospital here in this city?
A. I was, yes, last May, two days.
Q. What was that for?

Mr. Wall: I submit that is already in the testimony, and there is no use burdening the record with it. Why do you want

53 to get it in when you have it?

Mr. Heggerty: I am asking for it now.

Mr. Wall: You have already got it.

Mr. Heggerty: Let me get it in. I have a right to have it in.

Mr. Wall: I object to it as not proper cross-examination, as not material to any issues made by the pleadings in this case, and simply encumbering the record unnecessarily.

Mr. Heggerty: Will you answer the question, please?

A. Yes, that was for gonorrhea, clap.

Q. You never had been to any other hospital at all?

A. No.

Q. How long have you been troubled with this nervous condition?

A. Since I went to the hospital—just since I went on the "Venezuela," the second voyage going out to China.

Q. Never before?

A. Never; I am going on the sea for fifteen years, sixteen years, right here in San Francisco, and made many voyages on the Pacific Mail boats, the big boats between here and China, and never had any trouble or went to no hospital in my life; sixteen years right here in Frisco—the only time I was in the hospital, I forgot, was when they took this finger off on the Union Oil Company boat.

Q. That is at the second joint?

A. Yes.

Q. Of the middle finger of the right hand?

54 A. Yes; it was taken off at San Diego; this was mashed by a hammer.

Q. But you are sure that you signed the Shipping Commissioner's book in Honolulu, aren't you?

A. Yes, I signed for my wages, Mr. Heggerty; that was what I was called for.

Q. But, regardless of that you signed the book?

Mr. Wall: I object to that as not proper cross-examination. You have to take the whole of the witness' answer. Now you are trying to get him to confine it to what you want.

Mr. Heggerty: Oh, no; I am asking him that question.

Mr. Wall: He has answered.

Mr. Heggerty:

Q. You signed the book in the Shipping Commissioner's office, didn't you?

A. I signed the paper for my wages; I don't know if it was a book or a paper.

Q. Was it not a book?

A. I don't remember what it was, a book or a paper.

Q. Whatever it was, it was presented to you to be signed by the Shipping Commissioner wasn't it?

A. For my wages, I don't know if it was the Shipping Commissioner or not, because that is the custom-house there; it was not the Shipping Commissioner's office.

Q. Whoever he was, he was some official?

A. Yes, that is right, some official.

55 Q. Some official presented that paper, whatever it was, to you to be signed. Is that it?

A. Yes.

Q. And you signed it?

A. I did sign it; I signed for my wages.

Q. I am not disputing that; the only question is, I want to get the book, or whatever it is.

A. I don't know if it was a book or a paper; it was some kind of a paper.

Q. But it was not anything that was given to you by any officers of the ship, was it, to sign? It was by the Shipping Commissioner, or whoever the official was?

A. I was represented by the purser there.

Q. I am not asking you whether you were represented by the purser. I am asking you whether that document or book, or whatever it was that you signed before the Shipping Commissioner, was presented to you by the Shipping Commissioner?

A. Yes, Mr. Heggerty, I signed the paper for my wages; I don't know if the gentleman was a Shipping Commissioner or not; I never saw the man's face before; he called me over, he called me by name, he said, "Lucas, come here and sign for your wages"; I never asked anybody for my wages, either.

Q. What is your best judgment whether he was or was not the Shipping Commissioner—what do you think?

Mr. Wall: It is not proper cross-examination, and entirely immaterial, as to what his best judgment was, and asking for a conclusion of the witness. I would be perfectly willing to admit it was
56 some Government official who was performing duties that corresponded to the duties of the Shipping Commissioner.

Mr. Heggerty: That is all I want.

A. I don't know if it was the Shipping Commissioner.

Q. You will admit the same thing that Mr. Wall admits?

Mr. Wall: No necessity for his admitting it if I admit it.

Mr. Heggerty:

Q. Mr. Lucas, I will ask you whether or not in your judgment now, in your recollection of the place where you signed that document, whatever it was, whether the man who presented it to you to be signed by you was or was not a Shipping Commissioner, or an official of the United States Government?

Mr. Wall: I object to that as not proper cross-examination, and asking for a conclusion of the witness, and as already having been fully covered by the admission of counsel.

Mr. Heggerty:

Q. Will you answer that?

A. Yes, Mr. Heggerty, I will answer: I don't know if it was a Shipping Commissioner or a custom-house officer, or who it was; he never told me.

Q. But you are an old seaman?
A. I am an old sea dog.
Q. And you are always paid off before the United States Shipping Commissioner?
A. Many times I was paid in the office, and many times
57 I was paid by the captain, and many times I was paid by the mate.
Q. Not while you have been on the Pacific Mail boats?
A. While I was on the Pacific Mail boats I was paid by the United States Shipping Commissioner aboard the ship, and many times I was paid up in the office, in the Flood Building.
Q. Now, Mr. Lucas, you know that you always went to the Shipping Commissioner to get your wages, don't you?

Mr. Wall: I submit that has already been fully answered, and it is unnecessarily burdening the record.

A. Many times I went up to their office and got my money, up in the Pacific Mail office in the Flood Building.
Mr. Heggerty: How about the Shipping Commissioner? Did you ever go to the Shipping Commissioner?
A. Many a time I went up to the Shipping Commissioner, too, not in the Appraisers' Building, but aboard ship.
Q. Where you got your money and signed that paper, whatever it was, on this occasion in Honolulu, was that in the United States Custom-house Building, there?
A. That was in the United States Custom-house Building.
Q. Do you know whether it was in the office of the United States Shipping Commissioner?
A. No.
58 Q. Do you know where the office of the Shipping Commissioner is in Honolulu?
A. Yes, next door to it.
Q. Do you know whether or not it was the room belonging to the Shipping Commissioner?
A. I don't know the room, or anything, but I know it is next door to it.
Q. To the United States Shipping Commissioner's room?
A. Yes.

Redirect examination.

Mr. Wall:

Q. I show you Libelant's Exhibit 6, what purports to be a certificate of discharge of seaman, and ask you if you signed at the time in question any document that looked anything like that, or any paper in the nature of that?

Mr. Heggerty: I object to that question as incompetent, leading and suggestive, as being evidence given by the witness now in response to interrogatories of his own counsel, which his own counsel

objected to in giving answers to interrogatories by respondent's counsel.

A. No.

Mr. Wall:

Q. At the time that you signed for your wages down there, did anybody give you any paper purporting to be a discharge?
A. No.

Recross-examination.

Mr. Heggerty:

Q. Mr. Lucas, you know, do you not, that this discharge about which Mr. Wall has examined you, this certificate, Exhibit 6, purports to be a copy of a discharge that you signed in the Shipping Commissioner's office before the Consul, do you not?

59

Mr. Wall: I object to that as misleading; the document shows on its face it does not purport to be anything of the kind.

Mr. Heggerty:

Q. Will you answer my question?
A. I do not. I only was told to sign for my wages; I did not sign for any discharge.

Mr. Heggerty:

Q. You know this is not a certificate of the form that is made or given by the United States Shipping Commissioner, do you not, that this is a Consular certificate of discharge, and not the United States Shipping Commissioner's?
A. That is the Consul's.
Q. You know that a certificate of discharge before a United States Shipping Commissioner is different in form from this do you not?
A. No.

Mr. Wall:

Q. You were not given any sort of a paper that purported to be a discharge of any kind?
A. No.

Mr. Heggerty:

Q. You did not ask for any?
A. I did not ask for any. I did not ask for any wages, either. I was asked——
Q. (Intg.) Never mind that.

Mr. Wall: Go on and finish your answer.
Mr. Heggerty: I object to him going further. I only asked him

one simple question, and now he is saying something which is neither explanatory nor responsive to my question.

Mr. Wall: Read the question and the answer.

60 (Last question and answer repeated by the reporter.) I submit the rest of the answer should be taken. Go ahead and state whatever you want to state.

A. I was only asking for the permit to the hospital, that is all.

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

I certify that, in pursuance of the notice and stipulation of counsel, on Monday, August 18, 1919, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at my office in the Postoffice Building, in the City and County of San Francisco, State of California, personally appeared J. Lucas, the libelant, called in his own behalf, in the cause entitled in the caption hereof; and F. R. Wall, Esq., appeared as proctor for the libelant, and Charles J. Heggerty, Esq., appeared as proctor for the libelee, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced in typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposi-
61 tion to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the Clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said deposition, and caption named, nor in any way interested in the event of the cause named in said caption.

In Witness Whereof, I have hereunto set my hand in my office aforesaid this 5th day of September, 1919.

FRANCIS KRULL. [SEAL.]
United States Commissioner, Northern District of California, at San Francisco.

[Endorsed:] Filed Sep. 29, 1919. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

In the District Court of the United States for the Southern Division of the Northern District of California.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Libelee.

62 *Depositions on Behalf of Libelee.*

Be it Remembered: That on Thursday, July 24, 1919, pursuant to notice and stipulation of counsel hereunto annexed, at the offices of Francis Krull, in the United States Postoffice Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Fred M. Kramer, Robert R. Drummond, George W. Yardley and A. W. Rickey, and on Friday, July 25, 1919, Henry M. Guernsey, witnesses called on behalf of the libelee.

A. Michelson, Esq., appeared as proctor for the libelant, and Charles J. Heggerty, Esq., appeared as proctor for the libelee, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of the above-named witnesses may be taken in shorthand by E. W. Lehner.

It is further stipulated that the depositions, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking of said dep-

63 ositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived.)

Deposition of Fred M. Kramer, for Libelee.

FRED M. KRAMER, called for libelee, sworn.

Mr. Heggerty:

Q. Mr. Kramer, you were third officer of the steamship "Venezuela"?

A. I was; yes.

Q. And were such on the round voyage on which the vessel left San Francisco on February 17, 1919?

A. Yes.

Q. Destined to Honolulu and Oriental ports beyond and return to San Francisco?

A. Yes.

Q. Are you acquainted with the libelant, Mr. J. Lucas, in this case?

A. As much as I have seen him on the ship, yes.

Q. What position did he occupy on the ship on that voyage?

A. I think he was a water-tender.

Q. During that voyage on February 19, about 5 o'clock P. M., do you remember whether or not you had fire drill on that vessel?

A. We did.

Q. Were you in charge of that fire drill?

A. No. I was in charge of a boat.

Q. What was that boat, the life-boat?

A. The life-boat.

Q. Are you able to state whether or not Mr. Lucas was a member of the crew assigned to duty on that life-boat during fire drill?

A. He was a member of my boat's crew.

64 Q. Do you remember on that occasion anything about Mr. Lucas refusing to obey your orders during the fire drill?

A. I do.

Q. Will you please state fully the facts as you remember them?

A. Well, we have the customary fire drill, and we swung out our boats at the say of the chief officer, and at the whistle from the chief officer we swing them in; the boat was swung in in this position in this case and would not clear the davits. It is customary to take the fall off the cleat and raise the boat. In this case, I told Mr. Lucas to take the fall off the cleat and he refused; he wanted to know what for. I took the fall off the cleat myself and we hoisted the boat. The boat was secured in position, and we have our station places, and it has been customary, since I have been aboard the ship, to line the crew up to check them; in this case Mr. Lucas refused to stand in position, and he mingled so that we could not distinguish what crew belonged to what boat.

Q. What was his manner as to being insolent to you or not?

A. He was very antagonistic.

Q. What remarks, if any, did he make, or what did he state when he refused to take the fall off the life-boat?

A. None, other than I have said; he wanted to know what for and would not do it.

Q. That was in the presence of the other members of the life-boat crew?

A. Of the two crews.

Q. Then what did he say when you asked him to line up with the other members of the life-boat crew?

65 A. He said nothing; he just refused.

Q. Would not take his place?

A. Would not take his place.

Q. Do you remember where he stood, or what he did during the time the crew was lined up?

A. Yes. He stood abaft the railing on the inside of No. 9 boat.

It is customary for the crew of No. 8 boat, of which I am in charge, to line up between boats 8 and 9.

Q. Are you able to state whether or not he knew that was the correct procedure?

A. I think so. It was the first fire drill of the trip. He had been stationed at the boat previously.

Q. And this was life-boat No. 8?

A. Life-boat No. 8—No. 7—between boats 7 and 9, it should have been instead of 8 and 9.

Q. Do you remember him being logged?

A. I do.

Q. After he refused, and for insolence to you during that drill?

A. I remember the occasion.

Q. Do you remember whether or not you signed the log as one of the witnesses?

A. I signed it as one of the witnesses.

Q. Do you remember whether it was signed by Captain Yardley as master?

Mr. Michelson: I object to that as not the best evidence. The log will speak for itself.

Mr. Heggerty:

Q. Who else were present at the time of the signing of the log, Mr. Kramer?

A. The captain and the chief officer and myself.

66 Q. Do you remember seeing the captain and the chief officer sign the log?

A. I remember the chief officer signing; I did not happen to be in the chart-room where I could see the captain sign it.

Q. Was Mr. Lucas present at the time, do you remember?

A. If I remember correctly he was standing at the door of the chart-room.

Q. Do you remember what response, if any, he made to the entries in the log?

A. No.

Q. That is all you know about the matter?

A. That is all I know about the matter.

Cross-examination.

Mr. Michelson:

Q. You don't know whether Lucas had been instructed to take his place between the boats Nos. 7 and 9?

A. I don't know whether he had been instructed.

Q. You don't know whether he had been instructed.

A. I don't know. I know that the first assistant assigns the stations to them.

Q. You don't know yourself whether he was instructed or not?

A. No.

Q. Now, you say he was standing at the door of the chart-room. Are you positive that he was standing there?
A. No.
Q. You are not positive about that?
A. No.

Mr. Heggerty:

Q. How long have you been on this vessel?
A. Twenty-three months.

Mr. Michelson:

Q. Do you know if he was sick on board the ship?
67 A. No, I do not.
Q. Did you ever see him sick there?
A. No.
Q. Was he always able to do his work?
A. I don't know. He is not in my department.
Q. He was just on the fire-boat drill?
A. He was just in my boat, yes.

Mr. Heggerty:

Q. Are you going to sail from San Francisco on the "Venezuela" on the next voyage?
A. Yes.
Q. Sailing on Saturday, the 26th?
A. Yes.

Deposition of Robert R. Drummond, for Libelee.

ROBERT R. DRUMMOND, called for the libelee, sworn.

Mr. Heggerty:

Q. Mr. Drummond, what was your position on the "Venezuela" on the round voyage sailing from San Francisco on the 17th day of February, 1919?
A. Chief officer.
Q. And you are sailing on the vessel from this port on the round voyage commencing on the 26th of this month?
A. No, I am not sailing.
Q. You are going to go on another vessel?
A. I don't know yet; I presume I will.
Q. Do you know Mr. J. Lucas, the libelant?
A. I do.
Q. Was he a member of the crew of the "Venezuela" on the voyage in question?
A. Yes.
Q. What position did he hold, do you remember?
A. He was a water-tender.

Q. Were you present when Mr. Lucas was logged for re-
68 fusal to obey orders during fire-boat drill and for insolence to the third officer?

A. I was.

Q. Do you remember whether you signed the log with the master and third officer?

A. I did.

Q. Was Mr. Lucas present if you remember, on that occasion?

A. Yes.

Q. What answer, if any, did he make to the reading of the entry in the log?

A. He said, "That is all." That was his answer.

Q. No other answer?

A. No.

Q. Now, would you please state what you know in the matter of Mr. Lucas' refusing to obey orders and insolence to the third officer during the fire drill?

A. Well, it is customary after the boats are swung out and swung in for the chief officer to make the rounds of the different boats and see that all the crews are present and see that everything is as it should be; and when I reached No. 7 boat the third officer reported to me that this man had refused to obey an order, and furthermore had refused to get out in line with the rest of the crew of that boat; and when I went there he was standing amongst the crew of No. 7 boat, and when I told him to get out and get in line he said, "It is too cold out there." Then I had a life-preserver that I was taking around to instruct the members of the crew in the use of, and I told him to put it on, and he either did not know or would not put it on properly, so I reported the matter to the captain, and we called the man up on the bridge and this charge was made against him in the log-book, and read to him, and that was his answer.

69 Q. Did you ask him anything about refusing to obey the order with respect to disengaging the fall?

A. No, I did not ask him. The work was all finished at that time.

Q. That is all you know about it?

A. Yes, that is all.

Cross-examination.

Mr. Michelson:

Q. What was the charge that was made in the log-book, just generally?

A. As far as I remember, disobedience and insolence.

Q. To whom?

A. As far as I remember now,—I will not state this of a fact; we have not got the log-book here, and I would have to read it again; as far as I know, it was disobedience and insolence to the third officer.

Q. It was not in connection with his statement to you, that is, you did not log his insolence to you?

A. This part where he said, when I ordered him to get out in line with the crew, he said it was too cold out there.

Q. But that was not logged?

A. That was not logged.

Q. This reading of the log, did you read the log to him after it was entered?

A. The captain read it.

Q. The captain read it to him?

A. Yes.

Q. He just stood there, I suppose, and the captain read it and he said, "That is all"?

A. Yes.

Q. Did the captain ask him if he had any objection to the log in that form?

70 A. Yes. He asked him what he had to say.

Q. He asked him what he had to say and he said, "That is all"?

A. Yes.

Q. You did not ask him about the fall?

A. No.

Q. You remember his saying to the captain, "I am not guilty," or words to that effect?

A. No.

Q. There was nothing else said by him excepting, "That is all"?

A. No. Of course there was a little argument to make excuses.

Q. He tried to make excuses at the time the log was entered?

A. When the log was read to him.

Q. What did he say?

A. I can't remember; that is some time ago; that was in the month of February.

Q. He was talking after the log was entered to the captain?

A. Beforehand. There was nothing said after the log had been read to him, and after he gave his answer, "That is all"; there was nothing more said.

Q. But about the time of the entering of the log, perhaps a little more, or during the time, there was some discussion going on there?

A. Yes.

Q. And during that discussion he made the excuse as to why he did not perform his duties?

A. Yes.

Q. You don't remember any of those excuses he gave?

A. No, I do not.

Mr. Heggerty:

Q. You do not recall what he said as a reason why he did not?

71 A. Not definitely, I do not.

Q. Try to say the best you can remember it.

A. I cannot say just what he did say now.

Mr. Michelson:

Q. Mr. Drummond, how long are you going to be in San Francisco?

A. I probably will be here two weeks or more.

Q. Your home is in this city, is it?

A. As much as I call it my home. I intend to take a trip up to Seattle for a few days toward the end of next month.

Q. Do you think you will be in town here on the 18th of August?

A. I can't say.

Mr. Heggerty:

Q. Mr. Drummond, Mr. Lucas did not stay with the vessel at Honolulu or join the vessel again after he left the ship at Honolulu, did he?

A. No.

Q. I assume that this trip you are going to take is in the nature of a vacation, is it not?

A. Yes. I have asked for two weeks' leave of absence.

Q. And it is then your intention to join this ship or some other ship?

A. To report for duty to the company. I don't know what they will assign me to.

Deposition of George W. Yardley, for Libelee.

GEORGE W. YARDLEY, called for the libelee, sworn.

Mr. Heggerty:

Q. You are the master of the steamer "Venezuela"?

A. Yes.

Q. And were during the round voyage from here on February 17, 1919?

A. I was.

72 Q. Do you remember the occasion of the logging of Mr. Lucas for failure to obey orders and insolence to the third officer?

A. I do.

Q. And you signed the log, did you?

A. I did.

Q. With the chief officer and the third officer?

A. The chief officer and third officer signed after I did.

Q. Was Mr. Lucas present when the log was finished, the entry in the log was finished?

A. He was present; yes.

Q. What answer did he make to the reading of the log to him?

A. His answer was, "That is all."

Q. Do you remember before the entry was made what excuse, if any, as to his refusal or failure to obey orders of the third mate?

A. Well if I remember correctly he did not make any excuses.

Q. Do you remember anything about what he said?

A. The only thing I can recall is that he simply denied it.

Q. Now, Captain do you remember on the arrival of the vessel at Honolulu the payment of the wages of Mr. Lucas and his discharge?

A. I remember that he was paid off there.

Q. Paid off at Honolulu?

A. Paid off at Honolulu.

Q. Was that payment before the shipping commissioner?

A. Before the shipping commissioner.

Q. You were present, were you?

73 A. I was present.

Q. You signed the regular and usual discharge of this shipping commissioner?

A. Yes.

Q. What reason did he give you for wanting to be discharged from the vessel, Captain.

A. Well, he asked to be paid off, and we paid him off at his own request; I don't remember of his giving any particular reason. I thought under the conditions that it was probably as well to pay him off, and I did not go into it further than simply paying him off at his own request.

Q. Did you send him ashore, off the vessel, for the purpose of being treated at the Marine Hospital for any illness?

A. That was not the idea, when he was asked to be paid off; after we paid him off, he came and asked for a certificate to the hospital which I gave him.

Q. You did not send him to the hospital?

A. I did not send him to the hospital, no.

Q. Do you carry a regular physician and surgeon upon your boat?

A. Yes.

Q. And had one on board at that time?

A. We did.

Q. That was Dr. Rickey, was it?

A. Yes.

Q. How long has Dr. Rickey been physician and surgeon on the vessel, if you remember, Captain?

A. I don't know how far back *her* was there. He was there ever since I was there, last August; further than that I don't know.

Q. Do you carry on the boat hospital space equipped for the purpose of caring for the sick and injured?

71 A. Yes.

Q. And for treatment of any members of the crew or passengers that fall sick?

A. Yes.

Q. And you have ample and sufficient accommodations of all kinds for that purpose, have you?

A. Yes.

Q. All supplies and equipment?

A. Yes.

Q. Captain did you or the purser receive that from the shipping commissioner?

A. No, the purser received that.

Q. You don't know anything about that?

A. No.

Q. Do you remember whether you signed on another man to take the place of Mr. Lucas for the balance of the voyage out of Honolulu on that occasion, Captain?

A. Yes; we signed on another man but I don't remember his name. I do not recall who it was.

Q. He performed the duties that were performed by Mr. Lucas while he was on the ship?

A. Yes.

Q. Do you remember whether or not he was on the ship during the entire round voyage up to San Francisco?

A. Yes.

Q. Mr. Lucas did not continue with the ship from Honolulu?

A. No.

Q. Did he go ashore of his own free will and desire in Honolulu?

A. Yes, at his own request.

Q. Did he want to continue the voyage with you?

A. Did he want to?

Q. Yes.

A. Evidently not; he asked to be paid off.

75 Cross-examination.

Mr. Michelson:

Q. Captain, you heard Mr. Drummond testify here; Mr. Drummond stated that there were excuses given by Mr. Lucas during or about the time that the log was being made; he heard those; he was there at the same time that you were. You have no recollection of any excuses being given at that time at all?

A. I won't say. I say that he denied the charge that the third officer put against him in regard to obeying orders and swinging out the boat.

Q. He denied that part of the charge which applied to the swinging out of the boat?

A. Yes.

Q. Did he make any denial of the fact that he was insolent?

A. Well, when I questioned him regarding that part of it he said that it was too cold for him to get out, to get in line and muster.

Q. It was too cold for him to get out in line and muster?

A. Yes.

Q. How was his attitude towards you?

A. He seemed to be very much excited.

Q. I suppose at that time he was a little more abject, a little bit politer?

A. He was also very excited.

Q. Was he frightened?
A. No, I won't say he was frightened.
Q. But he was protesting that it was too cold?
A. Yes.
Q. Was it cold?
A. It was not cold, no; but I guess his idea was——
76 Q. (Intg.) I do not care what his idea was.
A. It was not cold, no; he did not have his coat on; I suppose he came out of his hammock.
Q. Was that before he was sick?
A. Yes, that was three days out of San Francisco.
Q. That was before he was sick? When was he sick?
A. He was not sick at all to my knowledge.
Q. Wasn't he treated by the ship's doctor?
A. Not to my knowledge.
Q. He might have been sick at that time for all you know?
A. He might have been sick.
Q. What time did you go to the shipping commissioner when you got into Honolulu?
A. I was there twice.
Q. You were up to the shipping commissioner twice?
A. Yes.
Q. What was the first time you were up there?
A. Well, it is quite a while ago, and I don't just remember.
Q. Approximately?
A. About 11 o'clock; the last time was about half-past three.
Q. Which time was it that Lucas was paid off?
A. Half-past three.
Q. What time did you give Lucas this note to the doctor, the permit, to go to the doctor?
A. About 4 o'clock, somewhere around there.
Q. Did the ship's doctor sign this permit?
A. The permit I gave him?
Q. Yes.
A. Not to my knowledge.
77 Q. Who was present at the shipping commissioner's at the time?
A. The commissioner.
Q. Just the commissioner?
A. Yes.
Q. You don't know of Lucas being sick at all aboard your ship?
A. Not to my knowledge.
Q. You don't know of his having received any treatment aboard the ship?
A. I do not.
Q. The doctor never reported anything as to that fact to you?
A. No.
Q. Do you usually let a man be discharged upon his request in the middle of a voyage that way, Captain?
A. Well, not as a rule, no.

Q. How many times have you done that in your career as the captain of a ship?

A. Well, probably three or four times.

Q. How long have you been a captain?

A. Five or six years.

Q. In five or six years you have let off three or four men?

A. Yes.

Q. Do you remember the names of those men?

A. No.

Q. Was it in the middle of a voyage as this was?

A. Not the same conditions, no.

Q. Now, as a matter of fact, Captain, it is contrary to all your usual procedure to release a man in the middle of a voyage, is it not?

A. Yes.

Q. You do not encourage that sort of a thing?

A. No.

Q. Usually where a man is insolent or something of that sort you rely on your fine system aboard ship to take care of that?

A. Yes.

78 Q. Is it not a fact that this man was sick?

A. He evidently was, but I could not say so; I could not say yes.

Q. You could not say yes?

A. No.

Q. Had you heard he had been sick or claimed to be sick?

A. No.

Q. Where did you make out this permit for him to go ashore?

A. I think it was made out at the commissioner's; I am not sure.

Q. Captain, is it not a fact that this permit was made out aboard ship and given to Lucas about 2 o'clock in the afternoon?

A. No; I gave it to him aboard ship.

Q. You gave it to him aboard ship?

A. Yes. He was to the commissioner's and I was on board the ship, and I told him to come over to the ship and get it.

Q. What time was that?

A. About half-past three or four o'clock.

Q. You went to the commissioner's the first time and then you came back with this permit?

A. I am not sure whether I made the permit out at the commissioner's or whether I made it out on board the ship, but I gave it to him aboard ship.

Q. If he went to the doctor's with that permit before three o'clock then you will admit you are mistaken about the time, will you?

A. I am giving this approximately; I am not exactly sure

79 of the time; I told you it was approximate.

Q. Do you remember who was present when you gave him the permit?

A. I don't think there was anybody present, that I can recall now.

Q. You never heard that he had complained of being ill?

A. No.

Q. He just asked to be paid off. Is that all he said?
A. He requested to be paid off, he wanted to be paid off.
Q. Had he had any trouble outside of this one episode that we have spoken of here?
A. Not that I know of.
Q. He just came up and asked you to pay him off, and you paid him off?
A. Yes.
Q. And it is a fact that you have only released three or four men in five or six years and you generally do not do it. As a matter of fact, you generally refuse the request of a man to be paid off in the middle of a voyage?
A. I do. I might add this, it is very seldom that a man who has been fined or logged requests to be paid off.
Q. Even under those circumstances you usually refuse to pay a man off in the middle of a voyage?
A. Yes. Another thing, this was an American port; it was not a foreign port.
Q. But it was in the middle of a voyage?
A. Yes; but it was an American port.

80 Mr. Heggerty:

Q. You did not have any power to refuse to let him go ashore, or to keep him on board, did you?
A. I did not have any power to refuse to pay him off, no.
Q. According to your understanding he is entitled to his discharge at any American port where he demands it, is he not?
A. Yes.
Q. Do you know of any possible means under the law that you could have exercised to keep him on board against his desire to stay there?
A. Of course I could have refused to pay him off, but the ship would probably have been under a fine.
Q. I mean physically if he wanted to go off?
A. No, not unless I locked him up.
Q. You did not have any authority to lock him up?
A. No.

Mr. Michelson: That is objected to as calling for the conclusion of the witness.

Mr. Heggerty:

Q. If this man was sick you would have the right to have him treated aboard ship, would you not?
A. Yes.

Mr. Michelson:

Q. Will you narrate the conversation that took place in the shipping commissioner's office in detail in Honolulu?
A. That is a kind of a hard thing to do. It is a long time ago.

Q. Was it explained before the commissioner that Lucas wanted to be discharged from the ship?

A. Yes, the commissioner knew about it.

Q. What did Lucas say?

81 A. I don't remember.

Q. Do you remember what you said?

A. I said I would pay him off.

Q. That is all you remember about the conversation?

A. Yes.

Q. That is the entire conversation that you can remember?

A. Yes; there was not very much conversation to it.

Q. Lucas said he wanted to be paid off?

A. Yes, he wanted to be paid off, and I said I would pay him off.

Mr. Heggerty:

Q. If he were not being paid off, you would not pay him the full amount of wages up to that time in any port, would you?

A. No.

Q. He was not entitled, unless he was being paid off, to the amount of wages that you paid him?

A. We would not have had to pay him the whole wages; in fact, we would not have paid the full wages.

Q. The reason why you paid him full wages was because he was discharged?

A. By mutual consent, yes.

Deposition of A. W. Rickey, for Libelee.

A. W. RICKEY, called for the libelee, sworn.

Mr. Heggerty:

Q. Doctor, on the round voyage leaving San Francisco on February 17, 1919, were you physician and surgeon on board the steamer "Venezeuela"?

A. Yes.

Q. Were you such during the entire round voyage?

A. Yes.

82 Q. How long had you been such physician and surgeon on board the "Venezuela"?

A. I went aboard the 1st of June a year ago.

Q. Doctor, prior to going on the "Venezuela" had you been on any other boat?

A. Yes, I was running down to Central America on the "Panama."

Q. How long were you in the service on the sea as physician and surgeon?

A. I think I was on the "Panama" a little over two years.

Q. How long have you been practicing altogether?

A. Well, I graduated in 1874.

Q. From what college?

A. Rush Medical College, Chicago.

Q. From that time up to the time you went to sea, where did you generally practice, in what State did you practice?

A. I practiced more in California than in any other. I came to California in the fall of 1876 and I have been here ever since.

Q. Where in California, some of the general places, did you practice?

A. Well, I was in Colusa County for a while, then I was in Contra Costa County quite a number of years.

Q. Did you ever practice in Sacramento County?

A. No, I never was in Sacramento. I was County Physician for Contra Costa for six years.

Q. Do you know the libelant, Mr. Lucas, Doctor?

A. Yes.

83 Q. How long have you known Mr. Lucas?

A. I could not tell. I see a good many on the boat, and I see them again. I don't know which boat I have seen them on, but I remember him.

Q. Do you remember him on this voyage?

A. Yes.

Q. Do you remember any occasion that Mr. Lucas talked with you about being ill?

A. Yes; he came to me two or three diffrent times complaining of a very severe headache, *neur.*

Q. Did you give him treatment for it?

A. Yes.

Q. Do you remember on the occasion of the ship approaching Honolulu on that voyage outward bound, of Mr. Lucas having any talk with you about being treated for illness?

A. About getting off there or anything?

Q. First about his treatment—yes, about getting off?

A. Yes, he came there, I think the night before we got into Honolulu; I won't be positive about that, but I think that was the time he came to me and he said he wanted to get off there and go to the hospital; so I told him I thought if he would remain he would soon be all right, and he remarked, he was all in, and he wanted to go ashore.

Q. Did you ask him to stay on the boat and take treatment there?

A. Yes; I told him that if he would stay I thought in a day or two he would be all right.

Q. Will you state whether or not you have on the boat all
84 facilities in the way of hospital spaces and equipment and everything to treat the crew or passengers who fall sick from any cause?

A. Yes; we have very good accommodations on that boat for sick people; but Mr. Lucas would not lay off. I told him two or three times he had better lay off two or three days and he would get well quicker, but he seemed ambitious to work and he did not do it.

Q. As far as you were able to judge from his condition, what, if anything, was the matter with him?

A. I think it was neuralgia of head and face; he complained more

of one side than he did of the other. I thought probably it was the effect of malaria that he had probably contracted in some other district; sometimes that will come out.

Q. What was the nature of the treatment that you gave him?

A. It was to relieve that pain and also to get his condition so he would throw it off, as we would say practically cure the disease.

Q. Aside from his statement to you as to his feeling of pain and his condition did you notice anything about him that would indicate to you that he was sick, and unable to work?

A. No. He did not seem to have any temperature, anything of that kind. I merely had to take his word as to his pain.

Q. Outside of the statement he made to you of being sick
85 and the symptoms that he felt of sickness, you did not observe anything in any way that he was sick at all?

A. No; I did not observe he was sick.

Q. Did he insist on going ashore and going to the hospital?

A. Yes; when he spoke of that, I told him that was something I had nothing to do with, he would have to see the purser and the captain to get a permit to go ashore.

Q. Subsequently did you give him a permit?

A. No.

Q. You did not give him the permit?

A. No, I never do that.

Q. What is the custom with respect to that permit?

A. The custom on the boats where I have been is, they never ask anything of that kind; in fact, I think he is about the first man that has ever gone ashore when I have been aboard, when he claimed that he was sick.

Q. You don't know of any reason why he could not have been treated by you on board?

A. No.

Q. Just as well as on shore?

A. No. It seemed to me he could be as well cured there as any place.

Q. From his appearance to you and his statements as to the symptoms, and the way they affected him, you advised him if he would lay off for a couple of days that he would be all right, and you would treat him on board?

A. Yes.

86 Q. That was your professional judgment of him based on his statements?

A. Yes.

Q. And so far — concerned any symptoms or anything else of the man you did not observe that he was sick or was ill in any way?

Mr. Michelson: I object to that as leading.

Mr. Heggerty:

Q. State whether or not, Doctor, aside from his statements to you as to the pain he felt and where he was afflicted with it, and these symptoms he stated to you of his condition, you were able to observe

or did you observe anything about him to indicate that he was in any manner ill or sick?

A. No, only what he told me, that he had that pain in his head and one day he would come up and say he was feeling much better, but would want more medicine; probably the next day he would come back and say he was worse again.

Q. And you treated him for the symptoms which he stated he felt?

A. Yes.

Q. As to his condition?

A. Yes.

Q. He did not sail out of Honolulu with the ship, did he?

A. No, I think not.

Q. Nor did he ever join the ship afterwards, so far as you remember?

A. No, he never joined that ship afterwards. I saw him down at the wharf one day, but he was not on the ship.

Q. When do you expect to sail again to sea?

A. On Saturday.

Q. On the steamship "Venezuela"?

A. Yes.

87 Mr. Heggerty: I do not suppose Mr. Michelson it is necessary for us to burden the record of putting down the residence and age, etc.

Mr. Michelson: No.

Mr. Heggerty: That is all.

Cross-examination.

Mr. Michelson:

Q. Doctor, did you ever make any report or tell the captain anything about Lucas being sick or being ill?

A. Well, I looked back over my daily report and the stub shows that I did.

Q. That is a record that you keep?

A. Yes.

Q. Are you required to keep that record?

A. Yes.

Q. Are you required to report these matters to the captain?

A. Every day I take up the daily report.

Q. Your report shows that you did report to him that Lucas was sick?

A. Yes.

Q. Did Lucas strike you as a man who was feigning illness?

A. I did not think much about it.

Q. It did not impress you one way of the other?

A. No.

Q. You just presumed that he was telling the truth and you prescribed for him?

A. Yes.

Q. He tried to work a good deal did he?

A. He said he was working.

Q. You did not see him work?

A. No; he was down in the engine-room.

Q. You said that he was ambitious and went ahead and worked?

88 A. That is what he said; when I advised him to lay off, he said that he didn't want to do that.

Q. When he said that he wanted to go ashore for treatment, wanted to leave the ship, did you tell him he would not get as good treatment on shore as he got on the ship?

A. No, I did not do that, because I would not want to knock the other fellow. I didn't know anything about it.

Q. Did you advise him it might be a good plan to go there for treatment?

A. No. I told him if he would stay on the ship I thought he would be all right. It did not strike me as a serious case at all.

Q. Neuralgia is a very painful thing, is it not?

A. Yes.

Q. As I understand it it has something to do with nerves in the face?

A. You can have it any place in the body.

Q. It is affected very much by cold wind or draft?

A. Cold winds will affect it sometimes.

Q. There are a good many of those winds and drafts aboard ship, are there not?

A. In certain places there are.

Q. But you did not recommend that it would be better for him to go to the hospital than stay on board ship?

A. No, I did not.

Mr. Heggerty

Q. The reports that you make to the master are just I presume in the nature of the members of the crew that call on you for treatment?

89 A. What I gave to the captain was a report.—Lucas, watertender, neuralgia of the head.

Q. Did you say anything about the treatment that you gave him?

A. No; the treatment is never reported.

(An adjournment was here taken until to-morrow, Friday, July 26, 1919, at 2 p. m.)

Friday, July 25, 1919.

Deposition of Henry M. Guernsey for Libelee.

HENRY M. GUERNSEY, called for the libelee, sworn.

Mr. Heggerty:

Q. What is your occupation?

A. Purser of the Pacific Mail Steamship Company.

Q. What vessel are you on?

A. On the "Venezuela"; I have been up to this voyage; I am going to take my vacation, lay off for a round trip.

Q. Do you know the libelant, Mr. Lucas?

A. He was a member of the crew.

Q. Do you remember whether he was a member of crew of "Venezuela" sailing from San Francisco on the round voyage commencing February 17, 1919?

A. I do not remember the exact date of sailing, but it was the previous voyage to this, so it must have been in February; I don't remember just exactly.

Q. Do you remember his leaving that ship at Honolulu?

A. Yes.

Q. It was on that voyage?

A. It was on that voyage, yes.

90 Q. Will you state what, if anything, Mr. Lucas said to you concerning leaving the ship at Honolulu?

A. On the morning we arrived at Honolulu Lucas came down to my office and said he wanted to get his money and get paid off at Honolulu, and told him, I said, "You understand that if you want your pay I can give it to you; if you want to be paid off you must see the captain." He says, "I want to take my money and want to go ashore." I was very busy right at that moment, and I did not think anything more about it, and then he came around a second time and said he wanted to be sure and go ashore in Honolulu, and I said, "All right, I will see what I can do." Captain Yardley had gone ashore, I think, or he was busy himself at the wharf somewhere, so I did not get a chance to speak to him right away, but in the afternoon, when we were clearing the ship, I took the log-book with sufficient money to pay him in full in case the captain decided to discharge him there and let him go ashore and went over to the custom-house with it, and the captain came in, I think it was just about half an hour before sailing time, and we paid Lucas his money before the Shipping Commissioner and he went ashore there; it was an American port and he demanded to be paid off and he was paid off.

Q. Do you know whether or not the captain signed his discharge?

A. Right before the shipping commissioner. The Shipping Commissioner carries a book which has the oath of the master at the top and which each seaman signs stating he has received full

91 wages, and that the captain and the vessel was all clear; in order to make that official of course the captain must sign it.

Q. What is the method in case a seaman wants to get a copy of that discharge?

A. He goes to the Shipping Commissioner for a copy of that discharge; the Shipping Commissioner makes it out; we have nothing to do with that.

Q. You have nothing to do with the seaman beyond that?

A. No. The shipping commissioner has all to do; in an American port the Shipping Commissioner has charge of the payment; we turn the payment over to him. I merely acting as agent handed the money out to the Shipping Commissioner as the real handler of the

fund; I merely acting as such passed it over to him and he signs himself clear, and if he wants a discharge he goes to the Shipping Commissioner and gets his discharge afterwards, if he wants to carry it with him.

Q. Is there any legal way that you know of or that you think of of keeping a seaman on board your ship if he insists on going ashore or being discharged?

Mr. Michelson: I object to that on the ground it is calling for the conclusion of the witness.

A. Well, there is no way of keeping any seaman on board of any ship at any time if he wants to go ashore; he can go ashore; as far as I know from all I have read of the seaman's law, a seaman can demand to be paid off at the first American port or any American port, and get full pay, but if he goes to a foreign port, I understand
92 that it must be by mutual consent of the master and seaman; otherwise he can only demand half his pay. That is my understanding of the law; my knowledge is only superficial; I have handled those cases lots of times.

Mr. Heggerty:

Q. How long have you been on the "Venezuela"?

A. I have been on the "Venezuela" from December, 1917.

Q. Mr. Lucas did not sail with the vessel from the port of Honolulu and continue on her voyage outward, did he?

A. No, he did not.

Q. Did he join her on her way home?

A. No, he did not.

Q. Do you remember whether or not you had to take on another man to fill his place?

A. Yes, we did; we had to look up another man to fill his place from Honolulu.

Q. Do you remember whether or not that man continued on the ship performing the duties that were to be performed by Mr. Lucas?

A. Yes; he made the entire round trip from Honolulu to *the* all of the ports of China, Manila and Japan and back to San Francisco.

Q. What was the destination of the "Venezuela" on that occasion, if you remember?

A. Of course our port, what we call our terminal port is Hongkong; you see we go via Japanese ports then from there to Chinese ports, Shanghai, over to Manila, and then down to Hongkong, and then from Hongkong we come back to Shanghai, Kobe,
93 Yokohama and back to Honolulu.

Q. And home?

A. And home, San Francisco.

Q. Do you remember about the period of time that it usually takes to make those trips?

A. Well, it takes on an average from 72 to 75 days.

Q. From San Francisco back?

A. From San Francisco back, yes; it varies; two and a half months approximately.

Q. Do you remember whether you took a receipt or does the Shipping Commissioner usually give the receipt to the master?

A. He gives the receipt to the master of the ship; acting as clerk for the master I took the receipt.

Q. You took a receipt from the Shipping Commissioner for the payment made?

A. Yes, for the payment to Mr. Lucas.

Q. Do you remember whether or not that was signed by the Shipping Commissioner?

A. The Deputy Shipping Commissioner; one of the officials.

Q. When you arrive here what do you do with those receipts?

A. As a general rule, I keep them aboard the ship for the protection of the master, showing that he has paid this money out.

Q. Do you remember as to this particular receipt of the company making any request of you to turn it into them.

A. Yes, Mr. Railcon, the auditor, when I came in, requested me to turn the receipt in to him.

Q. You did so, did you?

A. Yes.

Q. I had the receipt here yesterday; that is the one I showed to Captain Yardley, and I thought I had picked up the right files, but instead of that I picked up the wrong one. I guess that is all you know about it, is it?

A. Yes.

Cross-examination.

Mr. Michelson:

Q. Did Lucas ever tell you that he was sick?

A. Afterwards; after he had gone in shore he said he was feeling pretty miserable, when I met him over in the custom-house.

Q. Was that before or after he signed his receipt?

A. I don't exactly remember.

Q. The last thing you did was to have him sign the receipt, was it not?

A. I think it was just before because—I think it was just before he signed the receipt; I am not sure.

Q. What time was that of the day?

A. It was late in the afternoon; I could not tell you the exact time; but it was just before—I think we were due to sail at 5 o'clock; I should imagine it was around—I can't remember the exact time.

Q. Who was present when Lucas was paid off before the commissioner?

A. The master—the Deputy Shipping Commissioner—one of the shipping commissioners.

Q. You were there, were you?

A. I was there.

Q. If the captain testified here yesterday that only himself and the Shipping Commissioner were present he was mistaken?

A. He was right there because I went back with him, so that he could be paid off.

Q. I mean you were there?

A. I was there, yes; I stood right at the head of the stairs of the custom-house there, right in the same room.

Q. What conversation did the captain and the Shipping Commissioner have at the time, if you can recall?

A. I don't remember just what it was; I know that Mr. Lucas after he received his money wanted to go to the hospital; he said he had been up there himself, and said he wanted to go to the hospital, and he asked the captain to give him a permit, or whatever they call it, one of these seamen's sick permits—I have forgotten the exact name of it now; they have a form which is filled out — a seaman that wants to go to the Marine Hospital.

Q. Were you the first one to speak to the captain about Lucas wanting to be paid off?

A. I could not say.

Q. When you spoke to the captain did he say anything that anybody had spoken to him?

A. No, he did not.

Q. Did he appear as not having heard anything about it?

A. Yes, I don't think he had; I could not say for really and truly.

Q. What time was it you spoke to him in the day, if you remember?

A. Shortly after he returned from his drive; that is the first opportunity I had of seeing him.

96 Q. After what?

A. After a drive; he had gone on a drive; I don't just remember the exact time; I could not say; I know I got everything all ready so that if the master decided—we hunted around and found a man to take his place, if the master decided to discharge him, which he had to do if the man demanded it because it being an American port, so that we could go right ahead.

Q. Did Mr. Lucas say anything to you about a sick certificate for the hospital at the time he first spoke to you?

A. No, he did not then tell me, not to my recollection.

Q. Who was present?

A. I don't think there was anybody there but Mr. Lucas; I could not say really and truly because sailors come along, all the men on the ship drop around my office when we get in port, and I advance money to them on their wage account, and I thought when he came up at first he probably wanted to draw half his pay or something so that he could go ashore.

Q. What time did the captain first go off the ship that morning?

A. I could not tell you that; I don't know, because the captain is away up on the boat deck and my office is down on the main deck.

Q. You don't remember the exact time?

A. I don't remember the exact time.

Q. Just what did the captain say to you when you spoke to him about Lucas?

97 A. When I spoke to him he said, what does the chief engineer say about it, or something; I think it was some words to that effect. I said "Well, you have to see the chief engineer, Captain,"

and I think he called the chief engineer up, I am not sure about that part of it though; that is just a surmise; he probably would do that or send word to find out whether we could get a man in his place or not.

Q. Did you hear any other conversation aboard the ship about Lucas being sick?

A. No, I did not. I had not heard a word until that day.

Q. When you went to the captain and spoke to him, and said, "What does the chief engineer say about it?", what did you understand him to mean by that?

A. Well, this man belonged to the chief engineer's department, you understand, and if any man wants to get off a ship anywhere, or wants to be paid off or anything of that sort, he always calls the head of that department; if it is in the mate's department he calls the mate about the man, and gets a report and why he wants to go ashore and all about it. In the same way if one of my men were being paid off I would go to the captain and say so and so wants to get off at the port and give the reasons why he wanted to get off.

Q. As a matter of fact was it not up to the captain to say whether he would get off or not?

A. No. If a man wanted to go ashore in Manila at the port he could go. As far as I understand the law, that is my idea of it.

98 I don't know whether I am right about that, or not; but in a foreign port if he wants to go ashore, it must be by mutual consent. But if he wants to leave the ship, or go ashore at any time, no man can hold him aboard the ship, if he wants to go.

Q. You don't remember any further conversation that took place before the Shipping Commissioner?

A. No, I do not. All I remember was that the captain came in and signed up and then Mr. Lucas explained that he wanted to go to a hospital and asked the captain to give him a sick certificate, I think it is called, to the Marine Hospital.

Q. What is the effect of that sick certificate?

A. Any seaman is entitled to go to the Marine Hospital, I believe, within a period of six months.

Q. Is there any difference in form when a seaman goes to a hospital of his own accord and when he is sent by the ship?

A. I don't know of any difference, if there is any.

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

I certify that, in pursuance to the notice and stipulation of counsel, on Thursday, July 24, 1919, and Friday, July 25, 1919, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at my office, in the Postoffice Building, in the City and County of San Francisco, State of California, personally appeared Fred M. Kramer, Robert R. Drum-

99 mond, George W. Yardley and A. W. Rickey, and Henry M. Guernsey, witnesses called on behalf of the libelee in the cause

entitled in the caption hereof; and A. Michelson, Esq., appeared as proctor for the libelant, and Charles J. Heggerty, Esq., appeared as proctor for the libelee, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by their depositions hereto annexed.

I further certify that the depositions were then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the depositions to the witnesses and the signing thereof were expressly waived.

And I do further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the clerk of the United States District Court for the Northern District of California, the court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said depositions, and caption named, nor in any way interested in the event of the cause named in the said caption.

In Witness Whereof, I have hereunto set my hand in my office aforesaid, this 5th day of September, 1919.

[SEAL.] FRANCIS KRULL,
United States Commissioner, Northern District of California, at San Francisco.

100 [Endorsed:] Filed Sep. 29, 1919. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

In Admiralty. No. 16600

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP CO., a Corporation, Libelee.

(Opinion and Order for Entry of Decree in Favor of Libelant.)

F. R. Wall, Esq., Proctor for Libelant.
Charles J. Heggerty and Knight & Heggerty, Proctors for Libelee.

Libelant was ailing when he left the ship at Honolulu. The ship's doctor and the master were willing that he should go to the Marine Hospital there, and the master gave him the necessary permit. He neither sought nor desired a discharge, and says that he was only asked to sign for his wages, which he received. There is no reason

to believe that he was maligning, and I see no reason why this case does not come within the general rule.

A decree will be entered for libelant as prayed for. The objection to exhibit 4 is sustained.

101 September 30th, 1919.

M. T. DOOLING, *Judge.*

[Endorsed:] Filed Oct. 1, 1919. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

In the United States District Court in and for the Southern Division of the Northern District of California, First Division.

In Admiralty. No. 16600.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP CO., a Corporation, Libelee.

Final Decree.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the advocate and proctor for the respective parties, and due deliberation having been had, it is now by the Court,—

Ordered, Adjudged and Decreed that the libelee in said cause, Pacific Mail Steamship Co., a corporation, pay to the libelant, J. Lucas, the sum of $219 and interest thereon from May 23, 1919, the date of the filing of the libel herein, amounting to the sum of $1.81, together with libelant's costs herein, taxed at the sum of $57.35; and that said libelant have interest on said sums from

102 the date of this decree until the same be paid at the rate of six per centum per annum.

Dated: October 6, 1919.

M. T. DOOLING,
District Judge.

The above form of decree may be signed as drawn. Notice of entry of decree waived.

KNIGHT & HEGGERTY,
Proctors for Libelee.

[Endorsed:]

Received a copy of the within form of final decree, this 1st day of October, 1919.

CHAS. J. HEGGERTY,
By EUGENE P. JONES,
Proctor for Libelee.

Filed Oct. 6, 1919. W. B. Maling, clerk, by C. M. Taylor, deputy clerk.

In the United States District Court in and for the Southern Division of the Northern District of California.

In Admiralty. No. 16600.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, Libelee.

103 *Notice of Appeal by Libelee.*

To the Honorable Walter B. Maling, Clerk of the United States District Court; to J. Lucas, Libelant, and to Mr. Albert Michelson, Proctor for Libelant:

You and each of you are hereby notified that the Pacific Mail Steamship Company, libelee in the above-entitled cause, intends to and does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered in said cause on the 6th day of October, 1919, and from each and every part thereof and from the whole of said decree.

Dated: San Francisco, October 31st, 1919.

PACIFIC MAIL STEAMSHIP COMPANY,
Appellant.
By CHARLES J. HEGGERTY,
(Signed) CHAS. J. HEGGERTY,
(Signed) KNIGHT & HEGGERTY.
KNIGHT & HEGGERTY,
Proctors for Appellant.

[Endorsed.]

Receipt of a copy of the within Notice of Appeal by libelee is hereby admitted this 31st day of October, 1919.

ALBERT MICHELSON,
Proctor for Libelant.

Filed Oct 31, 1919. W. B. Maling, clerk, by C. M. Taylor, deputy clerk.

104 In the United States District Court in and for the Southern Division of the Northern District of California, First Division.

In Admiralty. No. 16600.

J. LUCAS, Libelant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Libelee.

Assignment of Errors.

The libelee hereby assigns the following errors in the rulings and proceedings of the District Court herein upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court in the above-entitled cause, to wit:

1. The Court erred in finding and adjudging that the libelant fell sick on board the steamer "Ven-zuela" and was sent to a hospital on shore at Honolulu, and that libelant had been left on shore at said hospital because of his sickness, and that said steamer continued on said voyage without libelant on board of her, because of his sickness.

2. The Court erred in finding and adjudging that libelant was not and in not finding and adjuding that he was discharged and paid off his wages in full, at his own demand and request, and by mutual consent of libelant and the master of said steamer before the
105 United States Shipping Commissioner at Honolulu, and in finding that libelant did not and in not finding and adjudging that he did sign and execute with the master before said Shipping Commissioner, and was bound by the Mutual Release provided for by Section 4552, Revised Statutes, and in all respects as required and in all respects complied with Section 4552, Revised Statutes.

3. The Court erred in finding and adjudging that libelant was not and in not finding and adjudging that he was paid off his wages in full and discharged by mutual consent of libelant and master before said Shipping Commissioner at Honolulu.

4. The Court erred in not finding that libelant was barred from recovering for wages, maintenance and medical treatment to the end of the voyage of said steamer, and that libelee was not released and discharged from all liability therefor under and by virtue of the mutual release executed by him and the master before said Commissioner and his discharge attested and certified on the Shipping Articles by said Commissioner and the said payment of his wages in full to that date, and that libelee was not liable thereafter to him for wages, maintenance or medical treatment, and the Court erred in setting aside the said Mutual Release and adjudging against libelee for wages to end of voyage, maintenance and medical treatment.

5. The Court erred in finding that the libelant fell sick or was sick on board of said steamer so as to entitled him to recover his wages, maintenance and medical treatment from libelee or to go
106 ashore from said steamer as a sick seaman.

6. The evidence proved and the Court erred in not finding that libelant was not a sick seaman on board said steamer, did not fall sick on said steamer, and was not sick or a sick seaman after he left the steamer at Honolulu or at any time before the end of said voyage for which he shipped, and that he never was while on board said vessel sick so as to be unable to work and perform the duties for which he shipped thereon, or was prevented thereby from working or performing his duties as a seaman aboard said vessel while he remained thereon or after he went ashore from said vessel or to the end of said voyage.

7. The Court erred in not finding that libelant had no right or cause by sickness or otherwise to leave said vessel at Honolulu and not continue on board in the performance of the duties for which he shipped during said round voyage and that he went ashore of his own volition and left said vessel and abandoned his shipping contract, requested and obtained his discharge by mutual consent and payment of wages in full to his discharge and was bound thereby.

8. The Court erred in not finding and adjudging that the libelant left said vessel and the service of the libelee voluntarily at his own request, and went ashore and refused to remain and to continue on said vessel and to be treated by the ship's doctor on the vessel and in the ship's hospital quarters, and that he insisted on leaving the ship, refused to be treated by the ship's doctor and remain on board and continue the voyage, and was paid his wages in full at his
107 request and with the master before the Shipping Commissioner was discharged and executed the mutual release provided for by Section 4552 of the Revised Statutes, and was bound and estopped by his said mutual release and discharge and payment in full of his wages, from any further and from the claim in this libel for wages, maintenance, cure or expenses of any illness.

9. The Court erred in finding and adjudging that libelant fell sick while in the service of libelee under the Shipping Articles, and that he was given a permit and sent ashore to the Marine Hospital or for shore treatment as a sick seaman of said vessel.

10. The Court erred in finding that the libelant did and in not finding and decreeing that he did not become or fall sick aboard the ship, so as to become entitled to make the libelee liable for any maintenance, cure, treatment, or wages during the voyage, save and except the wages earned up to the time he refused to remain on board the ship and be treated by the ship's doctor, demanded a permit to the Marine Hospital and went ashore and was paid off in full and was discharged by mutual consent, and with the master executed the mutual release before the Shipping Commissioner as shown by the evidence.

11. The Court erred in finding and decreeing that libelant fell sick on board the ship and that libelee was liable for and should pay libelant's wages for the full voyage and to the end of the round voyage, and for his maintenance, cure and expenses, and should
108 have found and decreed that he did not so fall sick and that libelee was not liable to pay libelant's wages after his discharge and the execution of the Mutual Release or to the end of the voyage or for maintenance, treatment and expenses after his discharge before the Shipping Commissioner.

12. The Court erred in finding and decreeing in favor of libelant that he recover the sum of $219 for wages, maintenance and medical attendance, and in not finding and decreeing in favor of libelee that it was not liable for the payment to libelant of any wages after he left the ship and went ashore and was discharged by mutual consent and executed the Mutual Release; and that libelant was not liable for wages to the end of the voyage, maintenance and expenses as a sick seaman; and that he left the ship at his own request demanded a permit to the hospital, refused to remain on board and continue the voyage for which he executed the articles, or to remain on board and be treated by the ships' doctor and be cared for in the ship's hospital; and that he was bound, barred and estopped under and by said Mutual Release and Discharge from recovering wages to the end of the voyage for treatment, maintenance and expense, and in not dismissing the libel with costs to libelee.

13. The evidence on the hearing showed that libelant was not sick and did not fall sick on board the ship, that he insisted on going ashore and demanded a hospital permit, and on payment of his wages and discharge, and refused to remain on board for treatment by the ship's doctor and hospital service on board said ship, and to
109 continue the voyage, that he was not sick or in any manner unable to perform his service and duties on board said ship during the round voyage, that he had not ceased or quit performing his or any duties on the ship because or on account of illness or sickness of any kind or while on the ship at all, but continued his service until he went ashore and quit the ship, that he was found to be not sick by the hospital doctor ashore, that he never was while on the ship or ashore in any way ill or sick or incapacitated from performing the duties for which he shipped, or so as to require medical or hospital treatment or to render libelee liable for wages to the end of the voyage, maintenance treatment or expenses, and the Court erred in not so finding and decreeing and dismissing the libel.

The Court erred in not finding and decreeing that the libelant having signed Shipping Articles for a round voyage on the steamer "Venezuela," several days prior to the arrival of the ship at Honolulu desired and intended to leave the ship at Honolulu and not continue on the voyage, that he continued working, did not ask to be laid off work because of any illness and was not sick or ill or claim to be incapacitating him in any way from performing his work; the ship carried a competent ship's doctor and was fully

equipped and supplied with a hospital on board; that libelant complained to the ship's doctor that he had headache, a fever, and night sweats, that the doctor observed and discovered no symptoms of any illness and acting upon his statements prescribed some
110 medicine for him on several occasions, he kept on work and then told the doctor he did not want to continue the voyage, the doctor told him that if he would lay off work he would fix him all right in a couple of days, he refused to do so and said he was going ashore at Honolulu, he asked the doctor to give him a permit to the hospital at Honolulu and was told he would have to see the captain, he then saw the purser, asked to be paid off and for a permit to the hospital, the purser told him he would see the master, which he did, and the master said he would have to see if he could get a man in his place before consenting to discharge and pay him off; finding he could get a man to fill his place, the master consented to pay him off and discharge him, and the libelant, the master and purser went before the U. S. Shipping Commissioner for that purpose, where and before whom the libelant was paid off in full and discharged from the Articles and so attested thereon by the Shipping Commissioner and the libelant and master thereupon executed the mutual release, attested by the Commissioner as prescribed by Section 4552, Revised Statutes, in the U. S. Shipping Commissioner's records, and libelant then asked the master for a permit to the hospital ashore which the master gave him on his return to the ship, and libelant remained on shore and did not continue on the voyage with the ship; and the Court erred in not so finding and decreeing and dismissing the libel with costs to the libelee; and the Court erred in finding and decreeing in favor of the libelant and against the libelee for wages to the end of the round voyage,
111 and for maintenance, treatment and expenses of libelant after he went ashore, was paid off in full and discharged from the Articles and executed with the master the said Mutual Release; and the Court erred in finding and decreeing contrary to the evidence in favor of libelant.

15. The Court erred in not dismissing the libel with costs to libelee.

Wherefore, appellant prays the Court that said decree be reversed, that said libel be ordered dismissed, and that appellant recover its costs in the District Court and on appeal.

(Signed) CHAS. J. HEGGERTY,
CHAS. J. HEGGERTY,
(Signed) KNIGHT & HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Appellant.

[Endorsed:] Filed Oct. 31, 1919. W. B. Maling, Clerk, by C. M. Taylor, Deputy Clerk.

In the United States District Court, in and for the Southern Division of the Northern District of California.

No. 16,600—In Admiralty.

J. Lucas, Respondent,

vs.

Pacific Mail Steamship Company, Appellant.

112 *Order that Original Exhibits on Hearing and Attached to Depositions be Sent by Clerk with Apostles on Appeal.*

Upon application of the appellant in the above-entitled cause:

It is Ordered, that the original exhibits filed on the hearing and those attached to the depositions herein be detached by the clerk of this Court, and sent by the clerk with the apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: December 10, 1919.

FRANK H. RUDKIN,
Judge.

[Endorsed:] Filed Dec. 10, 1919. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

Certificate of Clerk U. S. District Court to Apostles on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 99 pages numbered from 1 to 99, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of J. Lucas, Libelant, vs. Pacific Mail Steamship Company, a Corporation, Libelee, No. 16,600, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in ac-
113 cordance with the praecipe for the apostles on appeal (copy of which is embodied herein) and the instructions of the proctors for libelee and appellant herein.

I further certify that the cost for preparing and certifying the foregoing Apostles on Appeal is the sum of Forty-one Dollars and Five Cents ($41.05), and that the same has been paid to me by the proctors for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 17th day of December, A. D. 1919.

[SEAL.] WALTER B. MALING,
Clerk.

By C. M. TAYLOR
Deputy Clerk.

[Endorsed:] No. 3425 United States Circuit Court of Appeals for the Ninth Circuit. Pacific Mail Steamship Company, a Corporation, Appellant, vs. J. Lucas, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division. Filed December 17, 1919. F. D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, by Paul P. O'Brien, Deputy Clerk.

114 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

J. LUCAS, Respondent,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, Appellant.

Order Extending Time to and Including December 31, 1919, *to File Apostles on Appeal.*

It appearing to the Court that the clerk of the District Court for the Northern District of California, Southern Division, owing to pressure of business of the office of said clerk, has not been able to make and certify, to be filed in this Court, the apostles upon the appeal therein:

It is Ordered that the time to file the apostles certified by said clerk, upon said appeal, be and the same is hereby extended until and including the 31st day of December, 1919.

HUNT,
Judge.

[Endorsed:] No. 3425. United States Circuit Court of Appeals, Ninth Circuit. J. Lucas, Respondent, vs. Pacific Mail Steamship Company, Appellant. Order Extending Time to File Apostles. Filed Dec. 3, 1919. F. D. Monckton, Clerk. Refiled Dec. 17, 1919. F. D. Monckton, Clerk.

[Endorsed:] Printed Apostles on Appeal. Filed January 12, 1920. F. D. Monckton, Clerk.

115 & 116 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Upon Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

117 At a Stated Term, to wit, the October Term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit Held in the Court-room Thereof, in the City and County of San Francisco, in the State of California, on Thursday, the twenty-sixth day of February, in the year of our Lord One Thousand Nine Hundred and Twenty.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge, presiding.
The Honorable William H. Hunt, Circuit Judge;
The Honorable Charles E. Wolverton, District Judge.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Order of Submission.

Pursuant to stipulation of counsel for the respective parties, filed February 14, 1920, and upon oral motion of Mr. Charles J. Heggerty, proctor for the appellant, and good cause therefor appearing, Ordered appeal in the above-entitled cause submitted to the Court for consideration and decision on briefs, 6x22x10.

118 At a Stated Term, To Wit, the October Term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court-room Thereof, in the City and County of San Francisco, in the State of California, on Monday, the Third Day of May, in the Year of Our Lord One Thousand Nine Hundred and Tventy.

Present:

The Honorable William B. Gilbert, Senior Circuit Judge;
The Honorable Erksine M. Ross, Circuit Judge;
The Honorable William W. Morrow, Circuit Judge.

In the Matter of the Filing of Certain Opinions and of the Filing and Recording of Certain Judgments and Decrees.

By direction of the Honorable William B. Gilbert, William H. Hunt, Circuit Judges, and the Honorable Charles E. Wolverton, District Judge, before whom the causes were heard, Ordered that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a Judgment or Decree be filed and recorded in the minutes of this court in each of the causes in accordance with the opinion filed therein: * * * Pacific Mail Steamship Company, a Corporation, Appellant, vs. J. Lucas, Appellee. No. 3425. * * *

119 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, Appellant,

vs.

J. LUCAS, Appellee.

Opinion U. S. Circuit Court of Appeals.

Charles J. Heggerty and Knight & Heggerty, for the Appellant.
Albert Michelson and Herbert Chamberlin, for the Appellee.
Before Gilbert and Hunt, Circuit Judges, and Wolverton, District Judge.

GILBERT, *Circuit Judge:*

On February 18, 1919, the appellee signed shipping articles for a voyage from San Francisco to Hongkong and other points in the Orient and return to San Francisco as a port of final discharge. His wages were to be $75 a month. In his libel he alleged that while prosecuting the voyage he fell sick and was sent to a hospital at Honolulu, and that the vessel continued on said voyage leaving him on shore at said hospital; that while he was at Honolulu, he was compelled to pay for his subsistence $44 and for medical attendance $25, and that there was still due him $150 for wages from Febru-
120 ary 25th to April 25th, the date when the voyage was completed, and he asked that he be awarded $219. The court below awarded him $219, with interest and costs. From that decree the appeal is taken.

The court below in its opinion said: "The libellant was ailing when he left the ship at Honolulu, the ship's doctor and the master were willing that he should go to the marine hospital there, and the master gave him the necessary permit. He neither sought nor desired a discharge, and says that he was only asked to sign for his wages which he received. There is no reason to believe that he was malingering, and I see no reason why this case does not come within the general rule."

The appellant contends that as the evidence was presented by depositions, the finding of the trial court has not the finality which it would have if the testimony had been taken in open court, and that the evidence shows that the appellee feigned illness, and that he was finally discharged on February 25, 1919, at Honolulu, and it is urged that after that date the appellant was not responsible for further wages or for expense of cure or maintenance. The evidence does not convince us that the appellee feigned illness. The testimony of the doctor is that after the voyage commenced, the appellee complained of illness, that the doctor was of the opinion that he had neuralgia of the head and face, although the doctor had no further knowledge of his illness than that which he received from the appellee's statement,

he gave the appellee medicine on several occasions and re-
121 ported to the captain that the appellee was sick, and told the appellee two or three times that he had better lay off two or three days, and he would get well quicker, but, said the doctor, "he seemed ambitious to work, and did not do it." When the vessel reached Honolulu and the appellee expressed his desire to go to a hospital there for treatment, the master gave him the certificate of service of sick or injured seamen, furnished by the United States Public Health Service. The appellee was in the marine hospital at Honolulu two days when he was "Discharged Improved." The "Clinical Report" for the hospital shows that he was "sent to outpatient office for further treatment."

The principal question is whether it was error to hold that the appellee was not discharged at Honolulu before going to the hospital. At that time he and the master signed before a Shipping Commissioner a mutual release as prescribed by Rev. Sta's., sec. 4552. That section and the two sections which precede it prescribe the method of discharge of seamen. They require the master, not less than 48 hours before paying off or discharging any seaman, to deliver to him or to a shipping commissioner, a full and true account of all his wages and all deductions, etc., that upon the discharge of the seaman, or the payment of his wages, the master shall sign and give him a certificate of discharge, and that upon the completion of any discharge before a shipping commissioner, the master and the seaman shall, in the presence of the commissioner, sign a mutual release of all claims for wages in respect of the past voyage.

122 The purser testified that on arriving at Honolulu the appellee came to his office and said he wanted to get his money and get paid off at Honolulu and go ashore, and asked for a sick seaman's permit to go to a hospital, that he, the purser, took the log book with sufficient money to pay the appellee in full in case the

captain decided to discharge him, and went over to the custom-house with it, and the captain came in and "we paid Lucas his money before the Shipping Commissioner and he went ashore there." The captain testified that the appellee asked to be paid off and "we paid him off at his own request."

"Q. Will you narrate the conversation that took place in the shipping commissioner's office in detail in Honolulu?
A. That is a kind of a hard thing to do. It is a long time ago.
Q. Was it explained before the commissioner that Lucas wanted to be discharged from the ship?
A. Yes, the commissioner knew about it.
Q. What did Lucas say?
A. I don't remember.
Q. Do you remember what you said?
A. I said I would pay him off."

The appellee testified that he was ill and suffering and that he asked the purser for a permit to go ashore and to a hospital at Honolulu, and that the purser said that the captain would give him a permit at the custom-house; that at the custom-house he was told to sign for his money, his wages from San Francisco to Honolulu, and that he signed for $24.50. He denied positively that he had signed a release. On cross-examination he was asked if he knew what kind of a book he was signing, and answered: "The only thing I know is I was told to sign for the receipt of wages from Frisco to
123 Honolulu. * * * I signed the paper for my wages; I don't know if the gentleman was a Shipping Commissioner or not; I never saw the man's face before; he called me over, he called me by name, he said, 'Lucas, come here and sign for your wages.' I never asked anybody for my wages either."

In Rosenberg vs. Doe, 146 Mass. 191, it was held no defense that the plaintiff did not know the contents of the "mutual release," and signed it thinking it a mere receipt for money received. "We are of the opinion," said the Court, "that the statute means to make the release conclusive if it is executed and attested as required without fraud or coercion." And the Court observed: "The common law makes no exception to these principles in favor of seamen." While this is true of the common law, it does not express the rule of admiralty practice. In admiralty the release is only conclusive when entered into voluntarily and with full knowledge of the seaman's rights. Judge Story, in Brown vs. Lull, 2 Sumner, 443, held that the execution of instruments by seamen cannot be sustained unless it shall appear that they were fully explained and understood by the seamen. He said: "Seamen are a class of persons remarkable for their rashness, thoughtlessness and improvidence. They are generall necessitous, ignorant of the nature and extent of their own rights and privileges, and for the most part, incapable of duly appreciating their value." In Jackson vs. White, 1 Pet. Adm. 179, it was held that misconception and mistake in executing a re-
124 lease are open to inquiry. Cases applying these principles are The Bark Rajah, 1 Sprague, 199; The David Pratt, 1 Ware,

509; The Ship Ringleader, 6 Ben. 400; Harden vs. Gordon, 2 Mason, 540, 556. There is no evidence that the appellee read the instrument which he signed, or that its contents were explained to him, or that he received a discharge, or that the word "discharge" was ever mentioned in his presence. No deposition was taken of the commissioner. The captain's testimony is vague and that his memory was not reliable is shown by the fact that he denied that he had knowledge of the appellee being sick during the voyage, while the doctor's daily report shows that the appellee's illness was duly reported to him. Considering all the circumstances, we are not convinced that the trial court was in error in finding that the appellee neither sought nor desired a discharge, but was only asked to sign for his wages.

The appellee, having fallen sick on the voyage, was entitled to recover his full wages for the trip for which he was engaged, and the necessary expense incurred in his cure. Longstreet vs. Steamboat R. R. Springer, 4 Fed. 671, and cases there cited. The Osceola, 189 U. S. 158, 175; The Bouker, No. 2, 241 Fed. 831.

The decree is affirmed.

[Endorsed:] Opinion. Filed May 3, 1920. F. D. Monckton, clerk. By Paul P. O'Brien, deputy clerk.

125 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

[Endorsed:] Decree. Filed and entered May 3, 1920. F. D. Monckton, clerk. By Paul P. O'Brien, deputy clerk.

126 At a stated term, to wit, the October Term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the seventh day of September, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable William W. Morrow, Circuit Judge, Presiding; the Honorable William H. Hunt, Circuit Judge.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, and William H. Hunt, Circuit Judges, and the Honorable Charles E. Wolverton, District Judge, before whom the cause was heard, it is ordered that the petition, filed July 2, 1920, on behalf of the appellant for a rehearing of the above-entitled cause be, and hereby is denied.

Upon motion of Mr. Eugene Jones, on behalf of counsel for the appellant, and good cause therefor appearing, Ordered mandate of this Court under Rule 32 in the above-entitled cause stayed to and including October 12, 1920.

127 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and twenty-six (126) pages, numbered from and including 1 to and including 126, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, excluding all original exhibits, made pursuant to request of counsel for the appellant, and certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

128 Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 30th day of September, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

129 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Pacific Mail Steamship Company is appellant, and J. Lucas is appellee, No. 3425, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the
130 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of November, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

File No. 27,952. Supreme Court of the United States, No. 595, October Term, 1920. Pacific Mail Steamship Company vs. J. Lucas. Writ of Certiorari. No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 27, 1920. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

131 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Stipulation as to Return of Writ of Certiorari.

It is hereby stipulated between the Proctors and Attorneys of record in the above entitled cause that the Transcript of Record now on file in the Supreme Court of the United States, in the case of Pacific Mail Steamship Company, a corporation, Appellant, vs. J. Lucas, Appellee, No. 595, of October Term, 1920, of said Supreme Court, with a certified copy of this stipulaton, shall stand as and constitute the Return of the Judges of the United States Circuit Court of Appeals, for the Ninth Circuit, to the Writ of Certiorari issued out of said Supreme Court on the 24th day of November, 1920.

It is further stipulated that the original exhibits now on file in said cause, be forwarded to and filed with the Clerk of the Supreme Court, and be printed by the Clerk of the Supreme Court with the Record.

Dated December 23, 1920.

(Sgd.) ALBERT MICHELSON,
(Sgd.) HERBERT CHAMBERLIN,
Proctors and Attorneys for Appellee.
(Sgd.) CHARLES J. HEGGERTY,
(Sgd.) KNIGHT & HEGGERTY,
Proctors and Attorneys for Appellant.

(Endorsed:) Stipulation as to Return of Writ of Certiorari. Filed December 27, 1920. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

132 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari", filed in the above entitled cause on the 27th day of December, A. D. 1920, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of December, A. D. 1920.

[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

133 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3425.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Appellant,

vs.

J. LUCAS, Appellee.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court in obedience to the annexed writ of certiorari, issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record

and proceedings in the above-entitled cause, do attach to the said writ a certified copy of:

(1) Stipulation as to Return to Writ of Certiorari, the original of which said Stipulation was filed in said cause on this 27th day of December, A. D. 1920; and

(2) Libelant's Exhibits Nos. 1, 2, 3, 4, 5 and 6; and Respondent's Exhibits *Exhibits* "A", "B" and "C",

and in accordance with said stipulation, do hereby send the certified copy thereof, together with the original exhibits, to the said Supreme Court as the Return to the said Writ of Certiorari.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of December, A. D. 1920.

[Seal of the United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

134 [Endorsed:] File No. 27,952. Supreme Court U. S. October Term, 1920. Term No. 595. Pacific Mail Steamship Co., Petitioner, vs. J. Lucas. Writ of certiorari and return. Filed Jan. 6, 1921.

6

TRANSCRIPT OF RECORD.

EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 160.

PACIFIC MAIL STEAMSHIP COMPANY, PETITIONER,

vs.

J. LUCAS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 25, 1920.

CERTIORARI AND RETURN FILED JANUARY 6, 1921.

(27,952)

(27,952)

EXHIBITS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 160.

PACIFIC MAIL STEAMSHIP COMPANY, PETITIONER,

vs.

J. LUCAS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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		Original.	Print.
Libelant's Exhibit	1—Memorandum for treatment	1	1
	2—Receipted bill from Blaisdell Hotel	2	1
	3—Receipted bill from the Majestic Hotel	3	2
	4—Report of Dr. St. D. G. Walters, March 8, 1919	4	2
	5—Report of Dr. Ernest Albrecht Victors, May 1, 1919	5	3
	6—Certificate of discharge of Seaman J. Lucas, October 9, 1918	6	3
Respondent's Exhibit	A—Mutual release (form 713) signed by J. Lucas and G. W. Yardley, master of the S. S. "Venezuela," February 25, 1919	7	4
	B—Clinical report, February 25, 1919	8	4
	C—Certificate of Shipping Commissioner, port of Honolulu, as to payment of $24.50 in settlement of wages to J. Lucas by G. W. Yardley, master of the S. S. "Venezuela," February 25, 1919	12	4

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 19, 1921.

1 No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 18, 1919. F. D. Monckton, Clerk.

LIBELANT'S EX. 1.

J. Lucas Discharged Feb. 27, 1919, Improved.

L. E. H.

Sent to out patient office for further treatment.

2 No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 18, 1919. F. D. Monckton, Clerk.

LIBELANT'S EX. 2.

Rates reasonable. European plan.

Honolulu, Feb. 27, 1919.

Mr. J. Lucis, Room No. 108.

The Blaisdell,

Newest, Coolest Hotel in Hawaii.

Fort Street Between Hotel & Beretania.

Telephone 1267.

Bills Payable in Advance.

Lodging from 2-27 to 2-28	1.50
Telephone	....
Sundries	....

Paid.

J. H. W.

3 No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 18, 1919. F. D. Monckton, Clerk.

LB. 3.

Honolulu, T. H., March 3, 1919.

Mr. J. Locar.

The Majestic Hotel,

Sachs' Block,

Corner Fort and Beretania Streets.

Mrs. C. A. Blaisdell.

Rooms Payable in Advance.

Telephone 2744.

Room 220, Rent 1 week to March 7..... 4.00

Pd.

MAJESTIC HOTEL.
N. H.

4 No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 18, 1919. F. D. Monckton, Clerk.

LIBELANT'S EX. 4.

Dr. George Herbert. Dr. St. D. G. Walters. Dr. Grover A. Batten.

Offices: 1067 Alakea Street, Honolulu.

Cable Address "Herb."

Mar. 8th, 1919.

To the physician attending Mr. Garrey J. Lucas.

DEAR SIR:

This is to certify that I have been attending Garrey J. Lucas, for about ten days past. He had just been discharged from the Queen's Hospital, after having been an inmate in that institution for 2 days. The Marine Hospital Physician there claimed that there was nothing the matter with him.

After an exhaustive examination I came to the conclusion that he was suffering from neurasthenia the result of an attack of malaria some time ago.

Exophthalmas which is noticeably present would indicate the possible presence of Graves Disease, but as there is no enlargement of the Thyroid Gland I have eliminated that aspect of his condition.

The treatment has been salicylate of soda & Nux Vomica after meals· he is slightly improved.

I remain,

Fraternally yours,

ST. D. GYNLAIS WALTERS.

5 No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 18, 1919. F. D. Monckton, Clerk.

LIBELANT'S EX. 5.

Dr. Ernst Albrecht Victors,

San Francisco,

California.

May First, Nineteen Nineteen.

To whom it may concern:

Mr. J. Lucis has been under my care since March 21st.
He has been and still is incapable of following his vocation.

ERNST A. VICTORS.

Harry Lucas Cousin J. Lucas. Can find out from him where Lucas is. Address 1299 Golden Gate Ave. Chief Johnson now (May 24, 1919) on the Venezuela was not present when I signed off. Capt. Wamil there. July 1 there were purser the Depty. Com. & the man who was signed on in my place.

6 No. 3425. United States Circuit Court of Appeals for the Ninth Circuit. Filed Dec. 18, 1919. F. D. Monckton, Clerk.

LIBELANT'S EX. 6.

(Form No. 18—Consular.)

(January, 1917.)

Certificate of Discharge of Seaman.

American Consular Service.

Tampico, Mexico, Oct. 9, 1918.
(Place and date.)

Name of ship, Ardmore.
Official number, 212,964.
Port of registry, Bayonne, N. J.
Tonnage, 7,129 Gross.

Description of voyage or employment, Foreign.
Name of seaman, J. Leuces.
Place of birth, Greece.
Nationality, Greek. Age, 37 years.
Character, V. Good.
Ability, ——.
Capacity, Fireman.
Date of entry, Aug. 19/18. Date of discharge, Oct. 9/18.
Place of shipment, San Francisco, Cal.
Place of discharge, Tampico, Mexico.
Cause of discharge, Consul's decision.

I certify that the above particulars are correct, and that the above-named seaman was discharged accordingly.

C. H. LEBU,
Master.

J. LUCAS,
Seaman.

Given to the above-named seaman in my presence the day and year above written.

[Seal of American Consulate, Tampico, Mexico.]

DIGBY A. WILLSON,
Vice Consul of the United States of America.

(Here follow reproductions of pages 7-12, inclusive.)

Form 713

MUTUAL RELEASE

DEPARTMENT OF COMMERCE
BUREAU OF NAVIGATION
SHIPPING SERVICE

We, the undersigned, seamen on board the S. S. VENEZUELA,
on her late voyage from SAN FRANCISCO *to* MANILA, P. I.,
do hereby, each one for himself, by our signatures herewith given, in consideration of settlements made before the Shipping Commissioner at this port, release the master and owners of said vessel from all claims for wages in respect of the said past voyage or engagement, and I, master of said vessel, do also release each of the seamen signing said release from all claims, in consideration of this release signed by them.

Dated FEBRUARY 25, 1919 (SGD) G.W.YARDLEY, *Master.*

ATTEST as to said master and the seamen whose signatures appear below.

(SGD) J.I. ARCIA
Shipping Commissioner.

SEAMEN'S SIGNATURES.	STATIONS.	DATE WAGES COMMENCED. 1919	DATE OF THIS SETTLEMENT. 1919	WAGES PER MONTH.	TOTAL WAGES EARNED.	TOTAL DEDUCTIONS.	AMOUNT CASH RECEIVED ON THIS SETTLEMENT.
					2 00		
J. LU CAS	W.T.	2/17	2/25	75--	22 50	--	24 50

Sgt. 2 Guard

August 29, 1919.

I hereby certify the foregoing to be a true copy taken from the records of my office of the Mutual Release, Form 713, signed in my office February 25th, 1919 by J.Lucas, Water Tender and G.W. Yardley Master of the Steamship "Venezuela".

J. L. Garcia

Acting ~~U.S.~~ Shipping Commissioner

No 3475
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
DEC 18 1919
F. D. MONCKTON.
CLERK.

United States District Court
No. 16600.
Lucas vs P.M.S.S. Co.
Pltfs' Exhibit No A.
Filed Sept. 13, 1919
WALTER B. MALING, Clerk
By- Lyle P. Morse. Deputy Clerk

TREASURY DEPARTMENT,
U. S. PUBLIC HEALTH SERVICE.
Form 1946 B.
Ed. 25,000.—F. C., Mar. 17-17

BINDING SPACE. DO NOT WRITE HERE.

Station: Honolulu T.H. Name: J. Lucas Diagnosis: Myasthenia

Month.	2/26	2/26	2/27
Day of Disease.	1	2	3

Time of Day: M E M E M E

TREASURY DEPARTMENT,
PUBLIC HEALTH SERVICE.
Form 1946 a.

Port of Honolulu T. H.

CLINICAL REPORT.

OUTLINE.
In all cases obtain the following data:
FAMILY HISTORY.—Obtain general information.
PERSONAL HISTORY.—General health, habits, occupation, diseases of childhood, venereal history, rheumatism, gout, tuberculosis, malaria, enteric fever, etc.; previous similar attacks, previous injury (dates), complications and sequels.
PRESENT ILLNESS OR INJURY.—Disease—Time and mode of attacks; injury—time, part or parts, mode of production, symptoms (shock, deformity, impairment or loss of function, hemorrhage), ability to walk; other abnormal conditions—time and manner of occurrence, course, treatment previous to admission.
PHYSICAL EXAMINATION.—General appearance, eyes, ears, nose, throat, lungs, mucous membranes, tongue, heart, arteries, pulse, blood pressure, abdomen, bowels, liver, spleen, kidneys, skin, bones, joints, muscles, lymph nodes, nervous system, sexual organs.
TREATMENT.—Dietetic, medicinal, operative, etc. At end of treatment discuss etiology, pathology, prognosis, treatment, condition upon discharge.
Date clinical notes, prescriptions, etc.

2—878

Name, J. Lucas Admitted Feb 25, 1919

Age 37, Nativity- Greece.

Vessel S.S. "Venezuela"

Admitted to Ward 106, Queens Hospital at 4-54 P.M. Feb 25, 1919.

At 5. P.M. Feb 25, temp. was 98⅖ pulse 80 Respiration 20. At 8. P.M. temp. was 97⅘ pulse 74 and respiration 20.

7. P.M. House diet. Sod. Bromide XV.

7.30 P.M. Calomel III. 6m

8 P.M. Sod. Bromide XV 6m.

9 P.M. Resting comfortably.

10 P.M. Sleeping.

12 " " "

Feb 26, 1919 2nd day in hospital.

At 4. a.m. temp 97⅖ pulse 68 respiration 20.

" 6 a.m. mag Sul 45 c.c.

" 7.30 a.m. temp. 98 pulse 64, respiration 20.
House diet. Up and about.
Aspirin X 5 grains
Physical examination by Dr Hooper.

12. M. Complaining of slight headache

4 P.M. temp. 98⅖ pulse 78 respiration 20

8 P.M. Resting quietly.

TREASURY DEPARTMENT,
PUBLIC HEALTH SERVICE.
Form 1946 a.

Port of Honolulu, T. H.

CLINICAL REPORT.

Name, J. Lucas Admitted Feb 20, 1919

Feb 27, 1919 – 3rd day in hospital.

At 4 a.m. temp. 98.2 pulse 80, respiration 20
Slept well.

At 7.30 a.m. House diet.

" 8.00 a.m. temp 99, pulse 64, respiration 20
Aspirin X Gns.

9.30 a.m. Visited by Dr Stocker
Discharged
Improved.

Diagnosis Neurasthenia.

Sent to Out-patient Office for further treatment. Says he has pain in head and back of neck. Stomach always bothers him. Arm is very weak can hardly lift it. Leg to weak to walk on. Would like to have his blood examined and his stomach pumped out.

Examination: Negative.

OUTLINE.
In all cases obtain the following data:

FAMILY HISTORY.—Obtain general information.
PREVIOUS HISTORY.—General health; habits, occupation, diseases of childhood, venereal history, rheumatism, gout, tuberculosis, malaria, enteric fever, etc.; previous similar attacks; previous injury (date), complications and sequels.
PRESENT ILLNESS OR INJURY.—Time and mode of attack; injury—time, part or parts, mode of production, symptoms (shock, deformity, impairment or loss of function, hemorrhage), ability to walk; other abnormal conditions—time and manner of occurrence, course, treatment previous to admission.
PHYSICAL EXAMINATION.—General appearance, eyes, ears, nose, throat, lungs, mucous membranes, tongue, heart, arteries, pulse, blood pressure abdomen, bowels, liver, spleen, kidneys, skin, bones, joints, muscles, lymph nodes, nervous system, sexual organs.
TREATMENT.—Dietetic, medicinal, operative, etc. At end of treatment discuss etiology, pathology, prognosis, treatment, condition upon discharge.
Date clinical notes, prescriptions, etc.

2—678

A. B. C. Clinical Record.

FORM 1946 C.

Insert pin (O) here.

Name J. Lucas *Month* Feb 25, 1919.

EXAMINATION OF URINE.

Quantity passed in 24 hours .....

Specific gravity 1020

Reaction when passed at — *o'clock*

Reaction when examined at — *o'clock* acid

Color Amber *Odor* —

Sediment —

Do not fail to date each prescription and clinical note.

CHEMICAL EXAMINATION OF URINE MADE AT — O'CLOCK

Albumen —

Sugar —

Bile —

Blood Negative

Urea ..... *per cent* ..... *in 24 hours.*

Uric acid —

Chlorides —

Sulphates —

Phosphates —

Indican —

MICROSCOPICAL EXAMINATION OF URINE MADE AT ..... O'CLOCK

Casts —

Spermatozoids —

Epithelium V

Crystals —

Bacteria —

Amorphous deposits —

Binding Space. Do not write here.

EXAMINATION OF SPUTUM.

Character of sputum .....

Tubercle bacilli .....

Pneumococci .....

Other bacilli V

EXAMINATION OF BLOOD.

Number of red corpuscles .....

Number of white corpuscles .....

Hemoglobin ..... *per cent present by Von Fleischl hemometer.*

Hemoglobin ..... *per cent present by hematokrit* .....

Hemoglobin ..... *per cent present by chloroform-benzol test.*

Plasmodium .....

Other conditions of blood .....

TREATMENTS

This paper must not be used for other purpose than that of the clinical record.

GENERAL REMARKS.

.....

.....

Examined by ....., *Surgeon.*

Date .....

2—20

3425

Form 1618.

No. 1444

Port of HONOLULU, HAWAII

This is to certify that Capt. L. W. Goodley

of the Schr. Leonora has paid to the

Seaman, in settlement of wages, Twenty four 50/100 Dollars

$24.50

2-577

Shipping Commissioner.

No 3475

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
DEC 18 1919

F. D. MONCKTON,
CLERK.

United States District Court

No. 16600.

Lucas vs P.M.S.S. Co.

Pltf's Exhibit No C.

Filed Sept. 13, 1919

WALTER B. MALING, Clerk

Lyle P. Morse Deputy Clerk

FILED
OCT 25 1920
JAMES D. MAHER,
CLERK.

In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 5[redacted]160

PACIFIC MAIL STEAMSHIP COMPANY,
Petitioner,

vs.

J. LUCAS,
Respondent.

PETITION AND NOTICE OF MOTION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

CHARLES J. HEGGERTY,
KNIGHT & HEGGERTY,
Crocker Building, San Francisco,
Proctors for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

No. ———

PACIFIC MAIL STEAMSHIP COMPANY,
Petitioner,

vs.

J. LUCAS,
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PETITION AND NOTICE OF MOTION FOR WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Edward Douglass White, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The *Pacific Mail Steamship Company* respectfully petitions and represents to the Court that the

suit in *admiralty* of J. Lucas, libelant, against the Pacific Mail Steamship Company, respondent, lately decided by the Circuit Court of Appeals for the Ninth Circuit, *affirming* a final decree of the District Court of the United States for the Northern District of California, Southern Division, awarding libelant $219, with interest and costs, for *seaman's wages, maintenance and cure* against petitioner, and denying a rehearing, is a suit in admiralty in which the judgment of the Circuit Court of Appeals is made final by the provisions of the Judicial Code; and your petitioner applies to this Honorable Court to require by certiorari or otherwise, said case to be certified to the Supreme Court of the United States for its review and determination.

Reported: Pacific Mail Steamship Company v. Lucas, 264 Federal 938.

Summary of Statement.

February 18, 1919, the libelant signed shipping articles at San Francisco as water tender on petitioner's steamer "Venezuela" for a round voyage to Hongkong, China, and other ports in the Orient and return to San Francisco for final discharge, such voyage ending April 25, 1919; in his *libel* he alleged that he fell sick on the voyage and was sent to the United States Marine Hospital at Honolulu, the "Venezuela" continued on her voyage, leaving him on shore at said hospital.

Petitioner *answered* this libel, among other defenses alleging that libelant pretended to be ill and unable to make the voyage, and insisted on going ashore to the Marine Hospital, Honolulu; that the ship's doctor advised him to make the voyage, lay off work, and be treated by him on the vessel when he would be all right in a few days; that libelant refused to remain on the vessel and be treated by the ship's doctor and cared for and maintained in the ship's hospital, insisted upon being paid and was paid his wages in full to that time before the United States shipping commissioner, signed and executed with the master in the presence of the shipping commissioner and attested by the commissioner the *mutual release* required and provided for by section 4552, Revised Statutes.

The steamer "Venezuela" carried *passengers* and cargo and, as required by law under severe penalty, carried a competent *physician* and fully equipped and constantly maintained *hospital* spaces and equipment for the treatment and care of passengers and seamen falling sick during the voyage (Trans. p 84), all of which libelant knew (Trans. p. 43-44); and there was no question made in the case by libelant, his proctor or the Court as to the competency of the ship's doctor or the sufficiency of the ship's hospital equipment.

Before the vessel arrived at Honolulu, libelant visited the ship's doctor several times complaining that he was sick, the doctor observed no indications whatever of illness, but prescribed for him accord-

ing to the symptoms libelant described (Trans. pp. 84, 85); libelant kept on working, did not lay off and the day before the steamer arrived at Honolulu again visited the ship's doctor, told him he felt no better, that he did not want to continue the voyage and that he wanted to leave the ship and go ashore at Honolulu if he then felt no better (Trans. pp. 43, 44, 45); the doctor urged and advised him to remain on the vessel and continue the voyage, to lay off work, that he would treat him on the vessel, and that he would be all right in a few days (Trans. pp. 43, 44); libelant refused to remain on the vessel and be there treated by the ship's doctor, and insisted that he be paid his wages and go ashore at Honolulu, and asked for the master's certificate of service on the "Venezuela" to entitle him to enter the Marine Hospital at Honolulu; he kept constantly at work while on the vessel and at no time was unable to work up to the moment he left the vessel and went ashore, and at no time even claimed to be sick enough to quit work or unfit him to perform the services for which he shipped while on the vessel. He testified:

> "I was working all the time on the ship. The doctor told me the day before we got in he would fix me up and to make the trip; I told him if I did not feel any better than I do now I don't think I will be able to go any farther than Honolulu. He told me to stay on the ship, he would treat me and I would be all right in a little while. I knew they had regular hospital spaces and equipment there for anybody that was ill, and that I could have been treated

aboard the ship (Trans. pp. 43, 44). I did not want to make the round trip on the 'Venezuela' " (Trans. p. 45).

The steamer arrived at Honolulu February 25, 1919; libelant then asked to be paid his wages, refused to remain on the vessel to continue the voyage or be treated by the ship's doctor in the ship's hospital, and insisted on going, and did go, ashore at Honolulu; thereby putting it out of his power to perform and depriving the vessel of his services for the *two months* remaining of the voyage.

Thereupon, the libelant and the master went with the shipping articles before the United States shipping commissioner, and in the presence of the shipping commissioner he was paid his *wages in full* to that time, and with the master signed and executed the *mutual release* in the commissioner's official records, as provided and required by section 4552, Revised Statutes (Section 8341, U. S. Comp. Stat. 1916), the commissioner attested the same under his seal and signature, and the commissioner also *certified* on the shipping articles the *discharge* of libelant (Trans. p. 26).

The libelant testified: "I am an old sea dog" (Trans. p. 56); there is no claim *in the libel,* and he made no claim or suggestion, nor was there any evidence of fraud or coercion or overreaching in the execution of this mutual release, or that he had not been paid his wages in full to that time. He said, "I signed for my wages in the shipping commissioner's book (Trans. pp. 45, 46). I know what the form of

discharge is, but I did not sign a discharge. I signed for my wages" (Trans. p. 47).

Libelant also testified:

> "I went to the Marine Hospital, and the doctor there said 'I can't receive you here without a receipt from the skipper of the ship' " (Trans. p. 49); "I went back to the ship, and the captain gave it to me" (Trans. p. 37).
>
> "*After I got my discharge* I went straight to the hospital, and remained there two nights and a day" (Trans. p. 39).
>
> "*They put me out of the hospital* because the *doctor* thought there was *nothing wrong with me*" (Trans. p. 39).
>
> "Q. Now you say the doctor at the Marine Hospital turned you out of the hospital because he said there was nothing the matter with you?
>
> "A. Yes, Dr. Hooper said the *only thing I wanted was fresh air.* He said: '*That is all you need*' " (Trans. p. 48).
>
> The ship's doctor also testified: "I did not observe that he was sick," etc. (Trans., pp. 84, 85).

Libelant's evidence will be found (Trans. pp. 33 to 59) and the evidence of the ship's doctor (Trans. pp. 83 to 89).

Two months later—April 25, 1919—when the "Venezuela" returned to San Francisco, the libelant filed his libel against petitioner for wages, maintenance and cure from his discharge at Honolulu February 25, 1919, to the end of the voyage, April 25, 1919; the District Court granted a decree in accordance with his libel; petitioner appealed and the

Circuit Court of Appeals affirmed the decree, and denied a rehearing on September 7, 1920 (Trans. p. 126).

Importance of the Two Questions Involved.

The final decision by the Supreme Court of the *two* legal propositions involved in this application for certiorari is necessary for the following reasons:

1. This Court has never passed upon the *first* question, and the decision of the Circuit Court of Appeals is at variance with the well considered and constantly followed decision of *Justice Holmes* (Rosenberg v. Doe, 146 Massachusetts 191; 15 N. E. 510), at variance with its own prior decisions, and with the decisions of the other Federal Courts of the land, and is obviously erroneous;

2. The Circuit Court of Appeals did *not* decide, but absolutely *ignored* the *second* question, which was expressly made a defense in petitioner's answer to the libel and sustained by evidence on the hearing; the Supreme Court has never decided this question, and the decision of the Circuit Court of Appeals ignoring this defense is manifestly erroneous, and contrary to the correct legal conclusion, illustrated by *Judge Hough* (The Bonker No. 2, 241 Fed. 831, 835, and the Santa Barbara, 263 Fed. 369); and

3. The final decision by the Supreme Court of the *second* legal proposition involved in this case is of the utmost particular importance to the interests

and safety of passengers and cargo and the operation of American shipping across the Pacific Ocean out of the port of San Francisco, making Honolulu, Hawaii, a port of call, and American shipping coastwise between Atlantic and Pacific ports of call; and the final decision by the Supreme Court of the *first* legal proposition involved herein is of the utmost general importance to the protection of owners and vessels engaged in the American coastwise, foreign and domestic commerce on the sea; because, if seamen have the legal right to assert illness, leave the vessel and go ashore for treatment, refuse to remain on board and be there treated and cared for during the voyage by a competent ship's doctor, in fully equipped and constantly maintained ship's hospitals required by the law under severe penalty and constantly maintained at large expense to the owners, and thereby deprive the vessel of the seaman's services when able to work, as in this case during the two months remaining of the voyage, and then compel the vessel to pay such seaman wages, maintenance and care to the end of the voyage, a great and expensive burden will be imposed upon such American shipping, and also the safety of both passengers, cargo and vessel will be necessarily imperilled through undermanned steamers during the remainder of such voyage; and if seamen who demand their wages and insist on leaving the vessel at ports of call, on pretense of illness, and who are paid their wages in full, before a United States shipping commissioner, and sign and execute with

the master, without fraud, coercion or overreaching, before and attested by such commissioner, the "mutual release" provided for and required by section 4552, Revised Statutes, and which mutual releases are prepared by the government and contained in its official records, and can then be allowed to libel and recover for wages, maintenance and care to the end of the voyage, after refusing to receive all these aboard the vessel, a great and unjust burden and expense is thereby laid upon American shipping.

I.

General Reasons Relied on for Allowance of Writ of Certiorari.

The decision of the Circuit Court of Appeals is *contrary* to the provisions of section 4552, Revised Statutes; and is *contrary* to the well considered and constantly followed decision of *Justice Holmes* (Rosenberg v. Doe, 146 Massachusetts 191, 15 N. E. 510), a suit for *seaman's wages;* and *contrary* to their own decision (Petterson v. Empire Transp. Co., 111 Federal 931, 937), an admiralty case in which the same Circuit Court of Appeals expressly *quote* Justice Holmes' decision, thus:

> "In that case the Court had under consideration the provisions of section 4552 of the Revised Statutes, and of it said: 'We are of opinion that the statute means to make the release conclusive, if it be executed and attested as required, without fraud or coercion'."

And *contrary* to the *two* decisions of *Judge De Haven* (the Pennsylvania, 98 Federal 744, and Domenico v. Alaska P. Assn., 112 Federal 554, 560), both admiralty cases based upon and citing Justice Holmes' decision, holding the release conclusive in the absence of fraud, coercion, overreaching or underpayment, both at the common law and under section 4552, R. S.; and *contrary* to the decision of Judge Ogden Hoffman (Raymond v. the Ella S. Taylor, 40 Federal 902), where the master also gave the seaman a certificate of service on the vessel to entitle him to enter the United States marine hospital.

The Circuit Court of Appeals in the case at bar, held that the mutual release under section 4552, R. S., duly executed by the seaman and the master before and duly attested by the United States shipping commissioner, in the absence not only of any evidence, but in the absence of any suggestion in the libel or any claim by the seaman or his proctors of any fraud, coercion or overreaching, where the wages were paid in full, was not conclusive, where the seaman testified he was "an old sea dog" and knew what a discharge was, had insisted on leaving the ship and being paid his wages; because as that Court said, the case at bar was an *admiralty* case, the release was not read or explained to him, he thought he was only signing for his wages and the *deposition* of the shipping commissioner had not been taken; and after *quoting* Justice Holmes' decision in Rosenberg v. Doe, *supra*, cast it aside as a *common law*

decision, overlooking the fact that Justice Holmes was enforcing in a comomn law court a ***maritime*** cause and applying the maritime law, under the *reservation* in the Judiciary Act (quoted: Sec. 24, Judicial Code) to the seaman of "a common law *remedy* where the common law was competent to give it"; the Circuit Court of Appeals absolutely *ignored* its own previous decisions, and cited and quoted various early admiralty decisions made on settlements between master and seaman, all decided under the old admiralty rule years before the office of United States Shipping commissioner was created expressly for the purpose of guarding and protecting seamen against improvident and questionable settlements with masters, and years before the enactment of section 4552, Revised Statutes, expressly enacted to avoid all such questions and by its terms declaring that the effect of the mutual release in that section provided for and required, in all settlements should be:

> "2. Such release, so signed and attested, *shall* operate as a mutual discharge and settlement of all demands *for wages* between the parties therto, on account of wages, in respect of the past voyage or engagement; and
>
> "4. In cases in which discharge and settlement before a Shipping Commissioner are required, *no payment*, receipt, settlement or discharge *otherwise* made *shall operate* as evidence of the *release or satisfaction* of any claim."

Section 4552, Revised Statutes (Sec. 8341, U. S. Comp. Stats. 1916), provides:

"The following rules *shall* be observed with respect to the *settlement of wages:*

"1. Upon the *completion*, before a shipping commissioner, *of any discharge and settlement*, the master or owner *and* each seaman respectively, in the *presence* of the shipping commissioner, *shall sign a mutual release of all claims for wages* in respect of the past voyage or engagement, and the shipping *commissioner shall sign and attest it*, and shall retain it *in a book* to be kept for that purpose, provided *both* the master *and* seaman *assent* to such settlement, or the settlement has been adjusted by the shipping commissioner.

"2. *Such release*, so signed and attested, *shall operate as a mutual discharge and settlement of all* demands for *wages* between the parties thereto, *on account of wages*, in respect of the past voyage or engagement.

"3. *A copy of such release*, certified under the hand and seal of such shipping commissioner to be a true copy, shall be given by him to any party thereto requiring the same, and such copy *shall* be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

"4. In cases in which discharge and settlement before a shipping commissioner are required, *no* payment, receipt, settlement, or discharge *otherwise* made *shall operate* as evidence of the *release or satisfaction* of any claim.

"5. Upon payment being made by a master before a shipping commissioner, the shipping commissioner shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned."

Justice Holmes' decision in Rosenberg v. Doe, 146 Massachusetts, 191, 15 N. E. 510, (omitting the element in that case that the Seaman was a Finnish sailor who spoke the English language very imperfectly), is, we respectfully maintain, absolutely conclusive of the case at bar; and that decision has been constantly followed by all Courts since, and by the Circuit Court of Appeals for the Ninth Circuit in all of its decisions *prior* to the decision in this case.

II.

Because the steamer "Venezuela" was a *Passenger* Steamer required by the Revised Statutes of the United States, under penalty, to and it did carry a competent *physician* and fully equipped hospital spaces and equipment to treat and care for passengers and seamen falling sick during the voyage, and was entitled to retain libelant on board for care and treatment as a sick seaman by its ship's doctor and in its ship's hospital, and have his services on the vessel when he recovered; that it was the duty of libelant to remain on the vessel and be so there treated and cared for, and to perform the services for which he shipped when able to do so; that libelant refused to remain on the vessel and be there treated and cared for by its ship's doctor in the ship's hospital, that he insisted that his wages be paid and they were paid to him in full to that time, and requested a Certificate of

Service to entitle him to enter the Marine Hospital at Honolulu, and that he thereby deprived the vessel of his future services to which it was entitled when he was able to work; and that libelant thereby forfeited all right thereafter to wages, maintenance and cure from the vessel as a sick seaman, violated his shipping articles, and ceased thereafter to be a sick seaman for whose wages, maintenance and cure to the end of the voyage the vessel was liable, that when he refused to continue the voyage and remain on the vessel and accept and receive from the vessel there, that maintenance, cure and the wages petitioner was willing, offered and wished to give him, that he could not thereafter recover from petitioner for his maintenance and cure elsewhere and wages to the end of the voyage.

The Bouker No. 2, 241 Federal 831, 835;
The Santa Barbara, 263, Federal 369;
The Ella S. Taylor, 40 Federal 902.

The Circuit Court of Appeals *did not decide* but absolutely ignored this defense, expressly pleaded in Petitioner's *Answer* to the Libel. (Tran. p. 9).

Passenger ships are required by law, under severe penalties, to carry a competent doctor and constantly maintain fully equipped *Hospital* spaces to treat and care for passengers and seamen falling sick during the voyage.

The Iroquois, 194 U. S. 240;
24 Ruling Case Law, Sec. 388, 1287.

The case at bar establishes that had the libelant remained on the "Venezuela" he would have been competently treated and cared for, his wages paid, and petitioner would have had his services when he was able to perform them. He cannot refuse to accept the medical and hospital treatment and care on the ship, provided for at great expense, leave the vessel, deprive petitioner of the services for which he shipped, and then recover wages, maintenance and cure to the end of the voyage, as a seaman falling sick during the voyage.

Wherefore: Your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the Seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to the Supreme Court of the United States, for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said case therein, entitled: "Pacific Mail Steamship Company, Appellant v. J. Lucas, Appellee, Number 3425," pursuant to Section 240 of the Judicial Code, and that said judgment of said Circuit Court of Appeals in said case, and every part thereof, may be reversed by this Honorable Court, and your petitioner will ever pray, etc.

Dated, San Francisco,
October 16, 1920.

CHARLES J. HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Petitioner.

State of California,
City and County of San Francisco.—ss.

Charles J. Heggerty, of lawful age, being first duly sworn, deposes and says: That he is one of the proctors for Pacific Mail Steamship Company, the petitioner named in the foregoing petition; that he prepared the foregoing petition and that the allegations thereof are true, as he verily believes.

CHARLES J. HEGGERTY.

Subscribed and sworn to before me this 16th day of October, 1920.

(Notarial Seal) EUGENE P. JONES,
Notary Public in and for the City and County of San Francisco, State of California.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

No.

PACIFIC MAIL STEAMSHIP COMPANY
Petitioner,

vs.

J. LUCAS,
Respondent.

NOTICE OF MOTION FOR WRIT OF CERTIORARI.

To the Respondent in the above-entitled petition, and to Albert Michelson, Esq., and Herbert Chamberlin, Esq., Proctors for Respondent:

Please take notice that on Monday, the 15th day of November, 1920, at the opening of the Court on that day, or as soon thereafter as counsel may be heard, Pacific Mail Steamship Company, petitioner herein, will submit its foregoing verified petition for a Writ of Certiorari to the Supreme Court

of the United States, in its court room at the Capitol, at the City of Washington, District of Columbia.

Dated, San Francisco,
October 16, 1920.

CHARLES J. HEGGERTY,
KNIGHT & HEGGERTY,
Proctors for Petitioner.

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JAMES D. MAHER
CLERK

In the Supreme Court

of the

United States

OCTOBER TERM, 1920.

No. [redacted]160

PACIFIC MAIL STEAMSHIP COMPANY,
Petitioner,

vs.

J. LUCAS,
Respondent.

BRIEF FOR RESPONDENT.

FREDERICK CLAYTON PETERSON,
544 Market St., San Francisco,
Proctor for Respondent.

THE RECORDER COMPANY, [redacted] 900 STEVENSON ST., S. F.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1920.

No. 595.

PACIFIC MAIL STEAMSHIP COMPANY,

Petitioner,

vs.

J. LUCAS,

Respondent.

BRIEF FOR RESPONDENT.

A misconception of the facts in the present matter has lead petitioner to believe that a question of such gravity and importance is presented as to warrant the issuance of a writ of *certiorari* by this Court. And a misconception both of law and fact found in former rulings and of the law applicable to the facts in the present matter has led petitioner to believe that such lack of uniformity of ruling exists as to warrant the issuance of a writ of *certiorari* by this Court. If the question involved be not one of gravity or importance or one wherein rulings have not been uniform then, of course, the case is not one wherein the power of this Court to issue *certiorari* will be exercised. (*Warner* vs. *City of New Orleans*, 167 U. S. 474; 17 Sp. Ct. Rep. 892-95.)

MISCONCEPTION OF PETITIONER AS TO FACTS.

Petitioner, as libelee, claimed that the libelant feigned illness (Pet., p. 3); that libelant refused to remain aboard ship (Pet., p. 3); that he demanded his wages in full, was discharged, and signed a mutual release (Pet., p. 5); that he went ashore without the consent of libelee (Pet., p. 5).

Needless to say, all these were disputed matters between the parties. The libelant claimed that he was actually ill (Tr., pp. 34-36-41); that he neither asked for nor received a discharge (Tr., pp. 37-38-45-46-47-54-55-58-59-60); that he went ashore to the hospital by mutual consent (Tr., pp. 34-38-44-45-47-48-52); that he never signed a mutual release as such (Tr., pp. 37 to 60). The petition is replete with petitioner's version of the facts as the facts in the case, whereas both lower courts believed the libelant and disbelieved the libelee, and resolved the facts in favor of the libelant. The District Court in this connection said (Tr., p. 100):

> "Libelant was ailing when he left the ship at Honolulu. The ship's doctor and the master were willing that he should go to the Marine Hospital there, and the master gave him the necessary permit. He neither sought nor desired a discharge, and says that he was only asked to sign for his wages, which he received. There is no reason to believe that he was maligning. * * *"

And the Circuit Court of Appeals reached the same conclusion (Tr., p. 124):

> "There is no evidence that the appellee read the instrument which he signed, or that its contents were explained to him, or that he received a discharge, or that the word 'discharge' was ever mentioned in his presence. No deposition was taken of the commissioner. The captain's testimony is vague, and that his memory was not reliable is shown * * * Considering all the circumstances we are not convinced that the trial court was in error in holding that the appellee neither sought nor desired a discharge, but was only asked to sign for his wages."

We are, therefore, presented with a case wherein a seaman falls ill aboard ship and goes ashore for hospital treatment by and with the consent of the master of the ship. Whether or not a seaman may desert a ship that is properly equipped with medical and hospital facilities and demand hospital treatment ashore is not involved in the present case. And therefor the authorities cited by petitioner, *The Iroquois*, 194 U. S. 240; 24 Ruling Case Law, 1287; *The Bouker No. 2*, 241 Fed. 831; *Santa Barbara*, 263 Fed. 369) have no application to the facts in this case. The perils to navigation and passengers on ship depicted by petitioner as a result of refractory seamen feigning illness, deserting a ship properly equipped with medical and hospital facilities, and without regard to their contractual relations and the safety of passengers, the ship and its cargo (Pet., p. 8) demanding to be set ashore for hospital treatment, and further, demanding wages to the end of the voyage, maintenance, and cure, and justifying their conduct upon the ruling in *Pacific Mail Steamship Co.* v. *Lucas*, 264 Fed. 938,

are all imaginary, and not founded upon the law or facts of the case.

The case simply holds that where a seaman goes ashore for hospital treatment by and with the consent of the master of the ship, and is by such master furnished with the necessary hospital certificate, that the same rules prevail as where a sick seaman continues on the voyage and has the benefit of the hospital and medical facilities furnished aboard ship.

MISCONCEPTION OF PETITIONER AS TO LAW.

Petitioner claims that the ruling complained of is contrary to and opposed to the previous rulings wherein a mutual release has been held to be final and conclusive. The Massachusetts case of *Rosenberg* vs. *Doe*, 146 Mass. 191; 15 N. E. 510 is cited. That case appears in the Massachusetts reports in two phases; one in 146 Massachusetts, wherein defendant's exceptions to a verdict in favor of the plaintiff were sustained upon the ground that the Court had instructed the *jury* too broadly. On the retrial (148 Mass. 20 N. E. 176) plaintiff testified that he thought that a mutual release signed by him was a mere receipt for the money actually received. Notwithstanding the mutual release the jury rendered its verdict in favor of the plaintiff and defendants again alleged exceptions. These exceptions were overruled by the same judge who rendered the opinion in the earlier decision. The latter decision is plain authority for the proposition that such mutual releases in a common law court—following common law procedure—are

not final and conclusive. In both reports it is shown that common law procedure was followed.

Petitioner cites the cases of *Raymond* vs. *Ellen S. Taylor*, 40 Fed. 902; *The Pennsylvania*, 98 Fed. 744; *Pettison* vs. *Empire Tspn. Co*, 111 Fed. 931; *Domenico* vs. *Alaska P. Assn*, 112 Fed. 540-60 (Pet., p. 10) as opposed to the present ruling. Those cases were all cases wherein the seamen concerned executed mutual releases as mutual releases with full cognizance and apprisal of their nature and contents. In each case a mutual release was signed upon discharge. In the present case the libelant did not sign the so-called mutual release as a mutual release, but simply as a receipt for his wages to the date thereof. It was not signed at the time of discharge, and as held by the lower courts and as disclosed by the record no discharge, as a matter of fact, was ever given respondent.

Apart from case law bearing upon mutual releases the pertinent statutory law has been overlooked by petitioner, although same was presented to the lower courts. Under Section 4552 of the Revised Statutes of the United States we find this provision:

> "that upon the completion before a Commissioner of any discharge and settlement the master and owner and each seaman respectively in the presence of the Shipping Commissioner shall sign a mutual release of all claims for wages in respect of the past voyage or engagement."

And Subdivision 4 of the quoted Section reads as follows:

> "In cases in which discharge and settlement before a Shipping Commissioner are required no payment, receipt, settlement, or discharge, otherwise made, shall operate as evidence of the release or satisfaction of any claim."

In other words, the mutual release is dependent upon the discharge being completed in accordance with the statutory requirements. We find that no discharge, and no certificate of discharge was ever given respondent, and it accordingly follows that the statutory requirements were not observed, hence the mutual release relied upon is nugatory as evidence of the release or satisfaction of any claim. It was not signed as a mutual release, and it was not signed upon the completion of any discharge.

In the matter of mutual releases it has been the invariable practice and procedure of Admiralty Courts to apply broad general principles of equity:

> *Domenico* vs. *Alaska P. Assn.*, 112 Fed. 554-60.
>
> "The Principle, broadly stated, is this: that Courts of Admiralty are not bound in the decision of cases before them by technical rules, but are governed by enlarged views of equity and justice. And as seamen are usually improvident and often ignorant of their rights, they are frequently tempted by their necessities to take less than is due them * * * And it would not be in accordance with equity to hold that the receipt of less than was due them is a bar to recovery of the full amount they were entitled to receive according to the terms of the contract * * *"

And these broad general principles have received the support of express statutory enactment which was presented to and considered by the lower courts, and which petitioner entirely overlooked. Reference is now being made to the provisions of Sec. 4530 of the Revised Statutes of the United States (Sec. 8322, p. 8818, U. S. Compiled Statutes 1916). The particular portion thereof material to the point under discussion was enacted in 1915—long subsequent in date to the decisions cited by petitioner—and reads as follows:

> "* * * provided further, that notwithstanding any release signed by any seaman under Section forty-five hundred and fifty-two of the Revised Statutes, any Court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require."

Conclusion.

The ruling complained of simply holds, therefore, that where a seaman falls ill while on his ship and by and with the consent of the master is permitted to go ashore for hospital treatment and is provided with the necessary hospital certificate by the master that the same rule prevails as where a seaman falls ill on the ship and partakes of the medical and hospital facilities provided by the ship, to-wit, the seaman is entitled to wages to the end of the voyage, maintenance and cure. On the question of mutual release the present ruling simply holds that a mutual release not executed in conformity with statutory requirements, and not intended to operate as a mutual release may in a Court of Admiralty, applying equity principles, be disregarded. And apart from these

general principles we find express statutory provision not only permitting but requiring that under such circumstances the mutual release be disregarded.

It is therefore respectfully submitted that neither gravity, importance, nor uniformity of ruling are involved in the matter presented by the record and the petition for a writ of *certiorari* herein; that upon the facts as found by the two lower courts and supported by the record, no error whatever appears; and that the petition herein for a writ of *certiorari* should be denied.

Dated San Francisco, November 6th, 1920.

FREDERICK CLAYTON PETERSON,
Proctor for Respondent.

PACIFIC MAIL STEAMSHIP COMPANY *v.* LUCAS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 160. Submitted March 10, 1922.—Decided March 27, 1922.

Where a seaman went ashore at a port of call for hospital treatment, and, being asked only to sign for his past wages without mention of a discharge, executed with the master a mutual release under Rev. Stats., § 4552, but was not given a certificate of discharge as required by § 4551, and the purport of the overt acts in the circumstances was not to release his claim for future wages, maintenance and cure during the remainder of the ship's voyage, *held* (considering also the power given by c. 153, 38 Stat. 1165, to set aside such releases and "take such action as justice shall require,") that the release was not a bar to the assertion of such claim in a libel in admiralty. P. 267.

264 Fed. 938, affirmed.

CERTIORARI to a decree of the Circuit Court of Appeals affirming a decree of the District Court in admiralty awarding the libelant the amounts he was compelled to pay for subsistence and medical treatment at a port of call where he left the ship for hospital treatment, and the amount of his wages from that time until the ship completed her voyage.

Mr. Charles J. Heggerty for petitioner.

Mr. Frederick Clayton Peterson for respondent.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a libel brought by the respondent to recover $219 for wages, subsistence and medical attendance, the libellant having been left at Honolulu, ill, in the course of a voyage from San Francisco to the Orient and return. The defence is that he was not ill, that ill or well he should have remained upon the vessel, and further that he was discharged, and signed the mutual release required by Rev. Stats., § 4552, and by that section made a bar. The Circuit Court of Appeals confirmed the finding of the District Court that the libellant was not malingering, and, as we take it, although it is argued otherwise, also in finding that the doctor and master of the ship were willing that the libellant should go to the Marine Hospital. The only question that we see reason for considering is whether the two Courts were right in holding that the libellant was not concluded by the release.

Both Courts have found that the respondent was only asked to sign for his wages, that a discharge was not mentioned, and to put it in our own way, that the purport of the overt acts in the circumstances was not to release the libellant's claim. The petitioner cites the words of Rev. Stats., § 4552, and *Rosenberg* v. *Doe*, 146 Mass. 191, to show that such a position is impossible. But the same case at a later stage, 148 Mass. 560, admitted a different result where the sailor knew too little English to understand the nature of the document and there was evidence that it was misstated to him. In the present case we have the further very important fact, which does not appear in the report of *Rosenberg* v. *Doe*, that the master did not give the respondent a certificate of discharge, as he was required to, under a penalty of fifty dollars, by Rev. Stats., § 4551, if the respondent really was discharged. Moreover, by a statute later in its present form than *Rosenberg* v. *Doe*, it is provided that notwithstanding the statutory

release "any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require." Act of March 4, 1915, c. 153, § 4, 38 Stat. 1164, 1165. We are not prepared to say that the finding of the two Courts was wrong.

Decree affirmed.